

FILED CW 530

1 **PETITION FOR A WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY**2 Name Williams Tery / RICHARD W. WIEKING
(Last) (First) CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

E-Filing

3 Prisoner Number V113164 Institutional Address California State Prison-Solano5 P.O. Box 4000-4287 Vacaville Ca. 95696-4000

(PR)

CW

6 **UNITED STATES DISTRICT COURT**
7 **NORTHERN DISTRICT OF CALIFORNIA**8 Teryl A. Williams

9 (Enter the full name of plaintiff in this action.)

C } 07 5342

10 Case No. _____

(To be provided by the clerk of court)

11 D. K. Sisto Warden of Solano
State Prison

12 _____

13 _____

14 (Enter the full name of respondent(s) or jailor in this action)

15 _____

16 _____

Read Comments Carefully Before Filling In**When and Where to File**

18 You should file in the Northern District if you were convicted and sentenced in one of these
 19 counties: Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Monterey, Napa,
 20 San Benito, Santa Clara, Santa Cruz, San Francisco, San Mateo and Sonoma. You should also file in
 21 this district if you are challenging the manner in which your sentence is being executed, such as loss of
 22 good time credits, and you are confined in one of these counties. Habeas L.R. 2254-3(a).

23 If you are challenging your conviction or sentence and you were not convicted and sentenced in
 24 one of the above-named fifteen counties, your petition will likely be transferred to the United States
 25 District Court for the district in which the state court that convicted and sentenced you is located. If
 26 you are challenging the execution of your sentence and you are not in prison in one of these counties,
 27 your petition will likely be transferred to the district court for the district that includes the institution
 28 where you are confined. Habeas L.R. 2254-3(b).

1 Who to Name as Respondent

2 You must name the person in whose actual custody you are. This usually means the Warden or
 3 jailor. Do not name the State of California, a city, a county or the superior court of the county in which
 4 you are imprisoned or by whom you were convicted and sentenced. These are not proper
 5 respondents.

6 If you are not presently in custody pursuant to the state judgment against which you seek relief
 7 but may be subject to such custody in the future (e.g., detainees), you must name the person in whose
 8 custody you are now and the Attorney General of the state in which the judgment you seek to attack
 9 was entered.

10 A. INFORMATION ABOUT YOUR CONVICTION AND SENTENCE

11 1. What sentence are you challenging in this petition?

12 (a) Name and location of court that imposed sentence (for example; Alameda
 13 County Superior Court, Oakland):

14 Sonoma County Superior Court Santa Rosa, Ca.

15 Court	Location
----------	----------

16 (b) Case number, if known SCR 32705

17 (c) Date and terms of sentence October 16, 2003 12 years

18 (d) Are you now in custody serving this term? (Custody means being in jail, on
 19 parole or probation, etc.) Yes No _____

20 Where?

21 Name of Institution: California State Prison Solano

22 Address: P.O. Box 4000-4-207 Vacaville, Ca. 95696-4000

23 2. For what crime were you given this sentence? (If your petition challenges a sentence for
 24 more than one crime, list each crime separately using Penal Code numbers if known. If you are
 25 challenging more than one sentence, you should file a different petition for each sentence.)

26 Cal. Pen Code 459, 496 subd(a), 667.5, 12024 and 1202.45

27 _____

28 _____

1 3. Did you have any of the following?

2 Arraignment: Yes No _____

3 Preliminary Hearing: Yes No _____

4 Motion to Suppress: Yes No _____

5 4. How did you plead?

6 Guilty _____ Not Guilty Nolo Contendere _____

7 Any other plea (specify) _____

8 5. If you went to trial, what kind of trial did you have?

9 Jury Judge alone _____ Judge alone on a transcript _____

10 6. Did you testify at your trial? Yes No _____

11 7. Did you have an attorney at the following proceedings:

12 (a) Arraignment Yes No _____

13 (b) Preliminary hearing Yes No _____

14 (c) Time of plea Yes No _____

15 (d) Trial Yes _____ No

16 (e) Sentencing Yes _____ No

17 (f) Appeal Yes No _____

18 (g) Other post-conviction proceeding Yes _____ No

19 8. Did you appeal your conviction? Yes No _____

20 (a) If you did, to what court(s) did you appeal?

21 Court of Appeal Yes No _____

22 Year: 2004 Result: Denied _____

23 Supreme Court of California Yes No _____

24 Year: 2006 Result: Denied _____

25 Any other court Yes No _____

26 Year: 2006 Result: Denied _____

27 28 (b) If you appealed, were the grounds the same as those that you are raising in this

1 petition? Yes No _____2 (c) Was there an opinion? Yes No _____3 (d) Did you seek permission to file a late appeal under Rule 31(a)? Yes _____ No 4 If you did, give the name of the court and the result:
5 _____
6 _____
7 _____8 9. Other than appeals, have you previously filed any petitions, applications or motions with respect to
9 this conviction in any court, state or federal? Yes No _____10 [Note: If you previously filed a petition for a writ of habeas corpus in federal court that
11 challenged the same conviction you are challenging now and if that petition was denied or dismissed
12 with prejudice, you must first file a motion in the United States Court of Appeals for the Ninth Circuit
13 for an order authorizing the district court to consider this petition. You may not file a second or
14 subsequent federal habeas petition without first obtaining such an order from the Ninth Circuit. 28
15 U.S.C. §§ 2244(b).]16 (a) If you sought relief in any proceeding other than an appeal, answer the following
17 questions for each proceeding. Attach extra paper if you need more space.18 I. Name of Court: Sonoma County Superior Court19 Type of Proceeding: Writ of Habeas Corpus

20 Grounds raised (Be brief but specific):

21 a. Petitioner's Speedy Trial Rights Violated

22 b. _____

23 c. _____ see - Exhibit - E

24 d. _____

25 Result: Denied Date of Result: Jul. 31 200626 II. Name of Court: California Court of Appeal 1st Dis.27 Type of Proceeding: Petitioner's Writ of Habeas Corpus

28 Grounds raised (Be brief but specific):

1 a. Petitioner's Speedy Trial Right Violated
2 b. _____
3 c. _____ see Exhibit - F
4 d. _____

5 Result: Denied Date of Result: Aug. 24, 2006

6 III. Name of Court: California Supreme Court

7 Type of Proceeding: Writ of Habeas Corpus

8 Grounds raised (Be brief but specific):

9 a. Petitioner's Speedy Trial Right Violated
10 b. _____
11 c. _____ see Exhibit - G
12 d. _____

13 Result: Denied Date of Result: Apr. 11, 2007

14 IV. Name of Court: Supreme Court of the United States

15 Type of Proceeding: Petition for Writ of Certiorari

16 Grounds raised (Be brief but specific):

17 a. The California Supreme Court Erred By Failing
18 b. to Apply the United States Supreme Court's
19 c. Decision in Blakely v Washington (2004)
20 d. _____ see Exhibit - I

21 Result: Granted Date of Result: Apr. 9, 2007

22 (b) Is any petition, appeal or other post-conviction proceeding now pending in any court?

23 Yes _____ No

24 Name and location of court: _____

25 B. GROUNDS FOR RELIEF

26 State briefly every reason that you believe you are being confined unlawfully. Give facts to
27 support each claim. For example, what legal right or privilege were you denied? What happened?
28 Who made the error? Avoid legal arguments with numerous case citations. Attach extra paper if you

1 need more space. Answer the same questions for each claim.

2 [Note: You must present ALL your claims in your first federal habeas petition. Subsequent
3 petitions may be dismissed without review on the merits. 28 U.S.C. §§ 2244(b); McCleskey v. Zant,
4 499 U.S. 467, 111 S. Ct. 1454, 113 L. Ed. 2d 517 (1991).]

5 Claim One: The Suppression Motion Should Have Been Granted
6 By The Trial Court

7 Supporting Facts: Testimony of the arresting officer at the hearing estab-
8 lished that his searches were unlawful.

9 See Exhibit - A-1

10 Claim Two: The Trial Court Prejudicially Erred By Denying Petitioner's
11 Marsden Motion, Thus Forcing Petitioner To Represent Himself

12 Supporting Facts: Petitioner presents sufficient reasons for the motion, which
13 was denied. Defense counsel unreasonably claim Petitioner is not competent to
14 stand trial. Petitioner return to court again move to discharge counsel
15 and when this is denied Petitioner represented himself. see Exhibit- A-2
16 page

17 Claim Three: The Trial Court Prejudicially Erred By Instructing The Jury Regarding
18 Petitioner's Failure To Explain Or Deny The Evidence Against Petitioner

19 Supporting Facts: The trial court instructed the jury in the language
20 of CALJIC No. 2.62. See Exhibit - A-3

21 See Attached Sheet on next page b-2 for additional claims and supporting facts

22 If any of these grounds was not previously presented to any other court, state briefly which
23 grounds were not presented and why:

24 _____
25 _____
26 _____
27 _____
28 _____

1 Attached additional claims.

2
3 Claim Four: The Trial Court Denied Petitioner A Fair Trial
4 And Due Process Of Law By Erroneously Making And Sustaining
5 Hearsay Objections To Petitioner's Testimony.

6
7 Supporting Facts: Petitioner testified in his own behalf, and
8 necessarily adopted a narrative form of testimony. Petitioner
9 showed the jury that he owned a pager that the police had listed
10 as part of his property. Petitioner said Ms Rhone his co-de-
11 fendant had paged him, asked him to pick her up and take
12 her to Santa Rosa, using his friend's van. At first Petitioner
13 refused. Petitioner then tried to relate what Ms Rhone had
14 told him, but as we shall see, Petitioner was soon cut off. see
15 Exhibit - A - 4

16
17 Claim Five: The Ruling On Petitioner's Motion To Dismiss Was
18 Beyond Reasoning And Was Therefore An Abuse Of Discretion In
19 Excess Of The Trial Court Jurisdiction. The Trial Court
20 Specifically rejected The Reasoning Of Higher Authority, Ruling
21 That The California Pen. Code 1370 Requires The Trial Court
22 To Reset The Trial Date 69 Days After Reinstating
23 Criminal Proceeding, Which Denied Petitioner's Due
24 Process And Speedy Trial Rights

25
26 Supporting Facts: On February 7, 2003 Petitioner was arrested
27 and booked at the Petaluma Police Department. At this
28 time the Petaluma Police officer towed and stored a

continue
Next Page
→

1 Vehicle license number 1AME 828 to process for evidence in
2 case number SCR 32705, see Exhibit - H - Page 1

3 On March 3, 2003 Petitioner was arraigned in Sonoma County
4 Superior Court under California Pen Code 459 and 496. At this time
5 a trial date was set for April 30, 2003 58 days from arraignment,
6 and time was not waived by Petitioner or his codefendant see
7 Exhibit - H - Page - 1 also Page - 4

8 On April 30, 2003 a Marsden Hearing was held during which
9 Public Defender Karen Silver informed the court that Petitioner
10 should consider representing himself and also declared a doubt
11 about Petitioner's competency to stand trial. see Exhibit - J

12
13 On April 30, 2003 Judge R. Dale suspended Petitioner's
14 criminal proceeding because of Public Defender Silver doubt and
15 then vacated Petitioner's jury trial date under Pen Code 1368. see
16 Exhibit - H - Page - 4 and Exhibit - J - Page - 7

17 On May 1, 2003 Judge R. Ballinger appointed Dr. Cushing to
18 examine Petitioner under Pen Code 1368. On May 29, 2003 a
19 report from Dr. Cushing was filed and Judge R. Ballinger
20 reinstated Petitioner's criminal proceeding. Judge Ballinger
21 reset the trial date to July 14, 2003 (69) sixty nine days
22 from May 29, 2003 which made it 121 days from the cal-
23 culation under the due process and speedy trial statute.
24 see Exhibit - H - Page 5 and Exhibit - K - Page 1 to 7

25 On May 29, 2003 Public Defender Karen Silver informed
26 the court that Petitioner wanted to represent himself in trial.
27 see Exhibit - K - Page - 5 to 6

28 On June 19, 2003 Petitioner filed his own Motion to

1 Dismiss, which was held and denied. see Exhibit - H-Page-7
2 On August 25, 2003 Petitioner's investigator Anthony
3 Piazza request to examine evidence in the Petaluma Police
4 Department possession. Investigator Piazza was denied the
5 right to examine documentation and physical evidence
6 in the possession of the Petaluma Police Department on
7 August 25, 2003. see Exhibit - I

8 On June 13, 16, and 19 of 2003, July 9, 2003 and August
9 28, 2003 Petitioner filed discovery requests to examine
10 documentation and physical evidence.

11 On August 28, 2003 the prosecution informed Petitioner's
12 propria defense and Judge Dean Beaupre that the original bank
13 checks from the vehicle was not in their possession or control
14 to be examine or finger printed by Petitioner's propria defense.

15 On September 11, 2003 all the evidence produced at trial
16 was handle and contaminated by the police officer, prosecutor,
17 prosecutor's investigator, court clerk, and Petitioners investigator
18 before Petitioner's propria defense had a chance to examine
19 these items for physical evidence.

20
21 Claim Six: People v Black (2007) California 4th
22 5126812 is inconsistent with Cunningham v California (2007)
23 549 US 127 S. Ct. 856

24 In its opinion in Black, that Court held that where a
25 judge has found that conviction are numerous and of increasing
26 seriousness, and also has found numerous other factors in aggrav-
27 ation, none of which where tried to a jury, a sentence to the
28 upper term under the tripartite scheme of the determinate

1 Sentencing law does not deny the defendant his right to a jury
2 trial, guaranteed by the Sixth Amendment to the United States
3 Constitution, applicable to the states under the Fourteenth
4 Amendment. That Court interprets *Cunningham*, *supra*, as allowing a
5 court to base its choice of sentence on factors not tried by a
6 jury or admitted by the defendant, if there is also some factor
7 that the court could find as to which there is a jury
8 trial - see Exhibit - A - 6

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1 List, by name and citation only, any cases that you think are close factually to yours so that they
2 are an example of the error you believe occurred in your case. Do not discuss the holding or reasoning
3 of these cases:

4 _____
5 _____
6 _____

7 Do you have an attorney for this petition? Yes _____ No

8 If you do, give the name and address of your attorney:
9 _____

10 WHEREFORE, petitioner prays that the Court grant petitioner relief to which s/he may be entitled in
11 this proceeding. I verify under penalty of perjury that the foregoing is true and correct.

12 Executed on 10-14-07

13 Date

Tony Williams

14 Signature of Petitioner

15
16
17
18
19
20 (Rev. 6/02)

21
22
23
24
25
26
27
28

EXHIBIT

EXHIBIT-A

Supporting Facts on Claim
1

(1) The traffic stop

Petaluma police officer Paul Gilman testified that on February 7, 2003, at about 5:30 a.m., he was dispatched to Dan's Auto and Truck Supply on Lakeville Highway (RT 6]. He saw a beige van partially into the roadway, but not blocking traffic; the officer assumed the driver intended to turn onto the road (RT 19). As he approached, the van backed into the

⁵ Appellant subsequently moved (before a different judge) to renew and reopen the search motion, based on the newly-decided *People v. Sanders* (2003) 31 Cal.4th 318 (CT 237). The People filed opposition, insisting that *People v. Viers* (1991) 1 Cal.App.4th 990 authorized the search (CT 255). The court denied permission to reopen (CT 274). We also appeal this denial.

⁶ All references in this section will be to the volume of reporters' transcript covering the dates April 3 through June 19, 2003, bound in a single volume.

parking lot. He felt it was "suspicious" that a van was in the lot at a time when none of the businesses were opened (RT 9). The officer passed the location, turned off his lights, and circled back to a point near the parking lot, where he still saw the van, parked with its engine running and lights on (RT 7-9). About 35 seconds later, the van left the parking lot and turned right onto the highway; the officer followed at a distance. He attempted to run a check on the license plate, but the numbers were partially blocked by a ladder mounted on the rear of the vehicle (RT 9-10). The license plate could be read, but only by approaching the van on foot, and looking underneath the rung of the ladder (RT 10).⁷

Because the van had an obscured license plate, Gilman felt justified in stopping the van; he had no other lawful reason that he knew of (RT 18). He never issued a citation for the license plate violation (RT 26).

(2) The search of the van.

Gilman approached the van alone, before any backup had arrived (RT 19). He saw two persons in the cab, appellant and his codefendant, Galana Rhone (RT 11). Ms. Rhone, who was driving, was wearing a long-sleeved shirt, but no pants (RT 12). Williams gave his name, but had no picture ID. Gilman ordered Rhone out, intending to search the vehicle for her identification, because she also had not produced any ID (RT 12).

⁷ Photographs of the license plate were admitted (defense Exhs. A & B) (RT 18).

Meanwhile, appellant attempted to move to the back of the van, but the officer instructed him to sit down and face forward (RT 13).

Rhone explained to the officer that she needed to put pants on. He permitted her to retrieve a pair of pants from a duffel bag located near the driver's seat (RT 21). As she left the vehicle, she said she was cold and asked to retrieve her jacket. Gilman ordered her to sit on the curb, and told her he would retrieve it for her (RT 13). For "officer safety reasons", he also ordered Williams to exit the vehicle, and before proceeding further, searched appellant's pockets (see next subsection). He then returned to the van and started to open its rear doors to reach for a jacket he had seen in the rear of the van. As he was doing so, Williams said that Ms. Rhone did not have a jacket; Ms. Rhone agreed, and explained that what she wanted was her sweater, which, as the officer already knew, was in Ms. Rhone's duffel bag (RT 24).

Gilman disregarded this request, and removed the jacket, which was covering a large metallic object. He did so because he felt the jacket would be "much warmer" than the sweater. Underneath, he saw the metallic object in more detail. After giving the jacket to Ms. Rhone, he asked both defendants whether they owned the metallic object; they both denied it. Looking again at the object, he saw that the object was a large square safe with wheels. On top of it was a stack of blank business checks on top of it, from Dan's Auto and Truck Supply (RT 15-16, 25).

No one had consented to a search of the van (RT 25).

(3) The search of appellant's pocket

Gilman did a pat-search of appellant for "officer safety" and asked appellant if he "had anything illegal on him." Appellant denied this, and turned his back to the officer while spreading his arms, in a gesture the officer interpreted as permission to conduct a pat search (RT 14, 23).⁸ The officer then searched appellant and felt some wadded up paper in a back pocket, which, he believed, might contain identification. He did not believe that the wad of paper was some sort of weapon (RT 23).

He took these papers from appellant's pocket, and handed them to a backup officer. When Gilman eventually looked at the former contents of the pocket, he discovered receipts for the previous business day from the auto supply store, and inside the receipts, some money (RT 14-15). Gilman arrested both appellant and Ms. Rhone, and put them in handcuffs (RT 16).

The prosecutor argued that the search was permissible on three independent grounds: The suspicious activity of the van, the obscured license plate, and the fact (though unknown to the officer) that appellant was on probation (RT 29).

After argument, the trial court denied the motion without stating any reason for its ruling (RT [4/18/03] 4).

⁸ On direct examination, Gilman claimed he obtained oral permission to search for "anything illegal" (see Part C, *infra*).

Supporting Facts on Claim

2

On April 3, 2003, appellant presented a written *Marsden* motion, asking for removal of counsel, and alleging that deputy public defender Silver was inadequate; he wanted the court to appoint a new lawyer (CT 104). After being initially denied by Judge Ballinger, who then heard appellant's motion to suppress evidence, the motion was considered at greater length on April 30, 2003, when the case had been assigned to trial before Judge Dale.

Appellant's handwritten motion was ordered filed on that date. It set forth appellant's grievances in some detail. Nonetheless, Judge Dale asked appellant to explain his feelings orally in a closed proceeding where appellant and his attorney were present. The gist of appellant's complaint was that Deputy Public Defender Silver had consistently shown herself uninterested in trying the case, and spent almost all of her interview time trying to persuade appellant to plead guilty. As a result, she had allowed the trial date to arrive without fully completing discovery, and without any attempt to obtain a forensic examination of the physical evidence (RTM 11-19).¹¹ According to appellant, whenever he talked to Ms. Silver, she took unjust offense at his attitude. She even accused him of using profanity to her, which appellant did not use. All she wanted to talk about was disposing the case (RTM 28-29). He felt she was not interested in his case and at trial would just "do the basics", and he would be convicted (RTM 30).

Ms. Silver had committed what appellant saw as an act of betrayal. His co-defendant Rhone had written him a letter from jail and made a video that exonerated him from responsibility for the burglary. Ms. Silver showed the letter to Ms. Rhone's counsel, without appellant's permission. Appellant intended to reserve the letter and videotape for impeachment of Ms. Rhone, should she testify and try to implicate appellant. In response to the letter, Ms. Rhone's counsel instructed her client to change her story

¹¹ "RTM" refers to the *Marsden* transcript of April 30, 2003.

(RTM 3-5, 6, 8), and to side with the prosecution, possibly by testifying against appellant, but in any case by taking "a deal from the District Attorney (RT 7, 9).¹² Appellant believed Ms. Silver had "destroyed his defense" by turning the letter over to Ms. Rhone's counsel (RTM 10).

In defense of her professional competence, Ms. Silver explained that Ms. Rhone had also exonerated appellant and then retracted the exoneration when interviewed by the police. It was a tactical decision to show the letter to Jamie Thistlethwaite, Rhone's court-appointed lawyer¹³ (RTM 22). She felt some of the motions appellant wanted to file were unmeritorious (RTM 23). We need not, in this case, decide who was right. Regardless of whether Ms. Silver had acted properly and with the minimum diligence required of a court-appointed defender, her testimony and actions made it clear that the attorney-client relationship had broken down to the point she could no longer adequately represent appellant.

Ms. Silver's explanation made this clear, and her decision to make a groundless suggestion under Penal Code section 1368 made it certain that, however competently she might represent another client, she was no longer capable of representing appellant. She felt the case against appellant was overwhelming, and had told him so. Yet he insisted on a trial, and was "totally unapproachable about any disposition in the case". Appellant, in

¹² Ms. Rhone in fact did plead guilty before trial (CT 279).

¹³ Ms. Thistlethwaite is married to a senior member of the Public Defender's office, which no doubt increased appellant's distrust of Ms. Silver.

her view, was not cooperating to help prove his case, but had become obsessed with the idea he had been betrayed, and could talk about nothing but her having shown Rhone's letters to Rhone's counsel. She did not deny that their meetings had turned harsh and acrimonious. She told the court that in her opinion, appellant should consider going pro per, because he "has displayed a total inability to cooperate with counsel." (RTM 25).

The court opined that it could only discharge counsel "if it's clearly shown the attorney represented is not providing adequate representation or that there's such an irreconcilable conflict that ineffective representation is likely." He felt that neither situation had been shown, and denied the motion (RTM 32).

Immediately on hearing that ruling, Ms. Silver announced she would move under Penal Code 1368 to suspend the proceedings because she did not feel appellant was able to cooperate with counsel (RTM 34, CT 112).¹⁴

¹⁴ Clearly if attorney Silver thought appellant could represent himself, she cannot have also believed that appellant was incompetent to stand trial. A person who is incompetent to stand trial is incompetent to represent himself; in that respect, the standards for competence are identical (*Godinez v. Moran* (1993) 509 U.S. 389, 400-401; *People v. Welch* (1999) 20 Cal.4th 701, 732-734). The judge should not have referred the case for a competency hearing merely on defense counsel's request, without some evidence that would support the court's belief that appellant was incompetent (*People v. Frye* (1998) 18 Cal.4th 894, 953; *People v. Welch, supra*, 20 Cal.4th at p. 742). Trial in this case was continued beyond the statutory period (Pen. Code §1382) for no justifiable reason, and appellant's motion to dismiss should have been granted on that ground. Unfortunately, appellate review of the denial of dismissal is limited by the requirement that appellant prove prejudice from the delay in trial (*People v. Wilson* (1963) 60 Cal.2d 139, 151-152; *People v. Johnson* (1980) 26 Cal.3d 557, 574).

On May 22, 2003, Dr. Cushing reported that appellant was competent to stand trial (CT 114). When appellant returned to court on May 29, 2003, he moved to represent himself (RT 40), which was granted on June 10, 2003 (RT 44-45).

Trial was set before a different judge, Judge Boyd. After the jury panel had been seated and questioning of the panel had begun, the prosecutor asked the judge to again review whether appellant wanted to proceed in propria persona. The judge offered to appoint a different public defender, and to waive time for at least two weeks so the new public defender could prepare the case. Appellant believed that at least six months would be required, and knew the court would not continue the case for that length of time. Appellant then observed that the case had already been going on for eight months, and he would prefer to go to trial before the jury panel that was present (RT 93-95, 97). He explained that he would not "participate with the Public Defender's Office, period. I will not – I had bad experience there. I will not go there, okay....That's why I'm in the position I'm in right now." (RT 96).

Supporting Facts on Claim
3

In this case, the defendant testified to certain matters. If you find that the defendant failed to explain or deny any evidence against him introduced by the prosecution which he can reasonably be expected to explain or deny because of facts within his knowledge, you may take that failure into consideration as tending to indicate the truth of this evidence and as indicating that among the inferences that may reasonably be drawn therefrom those unfavorable to the defendant are the more probable.

The instruction goes on to explain that the failure to explain or deny does not "by itself" warrant an inference of guilt, nor does it change the burden of proof beyond a reasonable doubt; moreover, if the defendant does not have sufficient knowledge to explain or deny, this should not be used against him (CT 370).

This instruction cannot be given without adversely impacting a defendant's due process right to put on a defense, and was not justified in this case.

It is error to give this instruction absent evidence in the People's case which the defendant did not explain, although he could have

Supporting Facts on Claim

[THE WITNESS:] "Terry, come on. Terry, come on. Terry, I know somebody in Santa Rosa. Terry, just come on. Take me to Santa Rosa, Terry. It's going to be all good, okay?"

I said, "Okay. Well, is he going to let us use the van?"

She say, "Yeah, he'll let us use the van, Terry. It'll be all good, Terry, I got --"

THE REPORTER: I need you to slow down, please. I can't keep up with you.

MS. SHAFFER: I'm going to object to the hearsay about Ms. Rhone's statements.

THE COURT: Yes, the court will sustain the objection. The – that was said by a third person not present will be stricken, and the jury is not to consider that. You cannot – the testimony of what other people say cannot be given. You can talk about what you said and what you saw, but not --and – but not what somebody else said. All right?

THE WITNESS: I don't understand. It – I can't? –

THE COURT: You can testify as to what you said. You cannot testify about what somebody else said.

THE WITNESS: Okay. But, your Honor, but what I'm trying to – if – when I talk I can't just – my answer – my answer – my story comes out too – too – like, if somebody say something between and I respond back. I can't –

THE COURT: You cannot – under the rules of evidence, you cannot testify as to what other people said except under very different – different and particular circumstances, which that's the only time. So that's hearsay, and under the rules of evidence, you cannot give testimony about what somebody else said outside the courtroom.

[RT 364-365].

The court went on to say that appellant could give his half of the conversation, but not the other person's half. (RT 365). As appellant seemed to be confused, the prosecutor proposed discussing the matter outside the presence of the jury, but the court declined the offer (RT 366).

Appellant then attempted to tell his story without quoting what Ms. Rhone said to him, but soon ran astray, and the court interjected, "Sir, again, just to remind you, you cannot say what other people said." (RT 367).

After appellant testified, he called his investigator to the stand. Among other things, he established that the investigator had interviewed Dan Torliatt, the owner of the auto parts store. He asked, "what did the owner of Dan Autos tell about the burglary itself?" The prosecutor objected that this was hearsay. Without hearing argument or justification from appellant, the court sustained the objection (RT 406). (Oddly enough, when the investigator testified that he had talked to the witness across the street from the crime scene, a hearsay objection was overruled [RT 423]).

The court's ruling is inexplicably wrong

Clearly, appellant's purpose in testifying about what Ms. Rhone told him before the trip to Santa Rosa was to put before the jury what she had told him about the purpose of the trip, and the activities that she wanted to engage in. Undoubtedly, had appellant been able to repeat what she told him, it would have appeared that these were innocent purposes, and did not include burglarizing a store. This is simply not hearsay evidence, because it was not offered for the truth of anything Ms. Rhone might have said, but to show appellant's innocent state of mind. Hearsay is only inadmissible when it is offered to prove the truth of the matter stated.

Claim Six
and
Supporting Facts on Claim
6

right. It concluded that under the so-called *Almendarez-Torres* exception to *Cunningham, supra* and its predecessors *Apprendi*, *Blakely*, and *Booker*, a court may properly find that a defendant has suffered prior convictions, and may also find without the assistance of a jury that those convictions are numerous and of increasing seriousness.¹ Once that finding has been made, or once any other aggravating factor has been admitted by the defendant or found true by a jury, then the maximum legal sentence allowed by California statute is the upper term, and such a term may be imposed based on any factors a judge may properly consider, even though such factors are not based on a jury finding and not proved beyond a reasonable doubt (*Black II, supra* [slip opinion], pp. 11-13).

We disagree. Under California law as it existed prior to *Cunningham, supra*, the maximum term authorized by a jury verdict for a crime sentenced under Penal Code section 1170 was the middle term. By law, this term must be imposed if there are no circumstances in aggravation or mitigation (Pen. Code §1170, subd. (b).) By law, the Judicial Council was to adopt rules for sentencing, including criteria for imposing the lower or upper prison term (Pen. Code §1170.3). It did so. The current version of Rule 4.420, subdivision (a), California Rules of Court, states, “[t]he middle term must be selected unless imposition of the upper or lower term is

¹ *Almendarez-Torres v. United States* (1998) 523 U.S. 224; *Apprendi v. New Jersey* (2000) 530 U.S. 466; *Blakely v. Washington* (2004) 542 U.S. 296; *United States v. Booker* (2005) 543 U.S. 220.

justified by circumstances in aggravation or mitigation." Subdivision (b) adds: "Selection of the upper term is justified only if, after a consideration of all the relevant facts, the circumstances in aggravation outweigh the circumstances in mitigation." (However, these circumstances need only be proved by a preponderance of the evidence).

It follows that under California law, the mere presence of a circumstance in aggravation does not by itself authorize the upper term. The circumstances in aggravation, taken as a whole, must outweigh those in mitigation. In many cases, those factors in aggravation are not of sufficient weight to justify an upper term. In this case, for instance, appellant's prior record included many relatively minor felonies, which had resulted in prison terms. Accordingly, six years of appellant's twelve year sentence consisted of one-year enhancements for prior prison terms (see Pen. Code §667.5, subd. (b).) Whether or not imposition of the prior-prison-term enhancements precluded the court from also basing its selection of the upper term on the same convictions that led to the prison terms, it is indisputable that the weight of those convictions as aggravating factors was greatly reduced once the six consecutive one-year enhancements were imposed.

No court could say beyond a reasonable doubt that if the *only* fact in aggravation was appellant's prior record, the trial judge in this case would have selected the upper term. Appellant's prior record had already been

used twice – once to double his term under Three Strikes and once to impose six one-year enhancements. In selecting the upper term, the trial judge gave prominence to factors not found by a jury and not proved beyond a reasonable doubt: “professionalism”, “planning”, and “violent conduct” in the past. Although the Court of Appeal felt that the trial judge would inevitably have imposed the upper term, we see no logical reason why that should be the case.

The plain language of the *Cunningham* opinion supports our point of view: “In accord with *Blakely*, therefore, the middle term prescribed in California’s statutes, not the upper term, is the relevant statutory maximum ...” (127 S.Ct at p. 868).² The Supreme Court made it perfectly clear that *any* factfinding by a trial judge that raised a sentence beyond the midterm was barred under applicable Supreme Court precedent: “Factfinding to elevate a sentence from 12 to 16 years, our decisions make plain, falls within the province of the jury employing a beyond-a-reasonable-doubt standard, not the bailiwick of a judge determining where the preponderance of the evidence lies.” (127 S.Ct at p. 870).

The choice to sentence appellant to 12 years in prison rather than the 10 he would have received if the middle term had been selected was based on facts about the crime not found by a jury and not proved beyond a reasonable doubt. This procedure deprived appellant of his Sixth

² The reference is to *Blakely v. Washington* (2004) 542 U.S. 296, 303.

Amendment right to trial by jury. Review should be granted and the sentence should be reduced to ten years.

B. The error is prejudicial.

As should be evident, we disagree with the finding of the Court of Appeal in this case that any *Cunningham* error was harmless beyond a reasonable doubt. A trial judge might quite reasonably have felt that appellant was being punished enough for his prior convictions, and based his decision to impose the upper term primarily on the findings the judge made about the crime.

That, then, raises the interesting question of relief. In *People v. Sandoval* (S148917, decided July 19, 2007), this Court held that in evaluating whether *Cunningham* error is harmless beyond a reasonable doubt, the reviewing court must ask if a jury “would have found true at least a single aggravating circumstance had it been submitted to the jury” (Slip Opn., pp. 11-12). The “single aggravating circumstance” limitation is based, of course, on the reasoning of *Black II* that only a single aggravating circumstance need be proved by Constitutional means for the upper term to be the term authorized by the jury verdict. Since the question of relief would only arise if, as we argue, *Black II*’s reasoning is wrong, it would follow that in order for error to be harmless, the court would have to find beyond a reasonable doubt that *every* aggravating circumstance relied on by

the judge would have been found true by a jury. For the reasons set forth in pages 12 through 15 of the *Sandoval* opinion, it is difficult if not impossible for a reviewing court to make such a finding, especially where facts relevant to such a decision were not introduced into evidence because there was no need for the trier of fact to consider them. In this particular case, there is substantial reason to doubt that the crime was either “planned” or “professional”. We rather think a jury would find that this one-man operation, in which appellant pushed a safe down the stairs because it was too heavy for him to lift, was conducted in an unprofessional manner, probably because it was unplanned and the result of a spur-of-the-moment decision.

But we also question whether the prejudice analysis in *Sandoval* will ever be used again. *Sandoval* judicially rewrote the law, to say that the 2007 amendments to Penal Code section 1170, *et seq.* may now be used in cases that are reversed for *Cunningham* error. If that is the new standard, then surely the question of prejudice is now, “is the reviewing court convinced beyond a reasonable doubt that the trial judge, given untrammeled discretion, would choose the upper term?” As this Court implicitly recognized in *Sandoval, supra*, this is a question that is impossible to answer. The amended law leaves trial judges free to select the upper term based on the gestalt of the crime and the criminal, without finding any aggravating factors or mitigating factors. At the same time, it

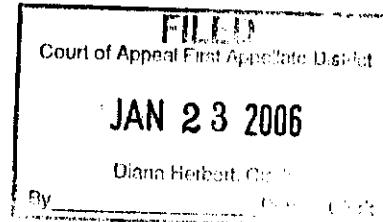
removes any suggestion that where aggravating factors outweigh mitigating factors, the upper term should ordinarily be selected. We cannot be confident that in the overall scheme of things, the trial judge might not have felt that a 10-year sentence was sufficient in this case. It is hard to mindread beyond a reasonable doubt and easy to remand the case to let the trial judge decide for himself what sentence is fair. Therefore in the ordinary case where *Cunningham* error is found, a remand for resentencing is appropriate.

EXHIBIT

EXHIBIT - B

COPY

COURT OF APPEAL, FIRST APPELLATE DISTRICT
350 MCALLISTER STREET
SAN FRANCISCO, CA 94102
DIVISION 3



THE PEOPLE,
Plaintiff and Respondent,
v.
TERYL ANTHONY WILLIAMS,
Defendant and Appellant.

A104274
Sonoma County No. SCR32705

BY THE COURT:

The petition for rehearing is denied.

Date: JAN 23 2006

McGUINNESS,
P.J.

oruu

COPY
X
24

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

DIVISION THREE

FILED

APR - 9 2007

Court of Appeal - First App. Dist.
DIANA HERBERT
By _____ DEPUTY

THE PEOPLE,
Plaintiff and Respondent,
v.
TERYL ANTHONY WILLIAMS,
Defendant and Appellant.

A104274

(Sonoma County
Super. Ct. No. SCR32705)

THE COURT:

On February 20, 2007, the United States Supreme Court granted certiorari in the above-referenced matter, vacated the judgment, and remanded the matter to this court for further consideration in light of *Cunningham v. California* (2007) 549 U.S. ____ [127 S.Ct. 856] (*Cunningham*). Accordingly, the remittitur issued by this court on April 25, 2006 is hereby recalled, and the superior court clerk is directed to return said remittitur to this court for cancellation forthwith.

Within 15 days of the date of this order, the parties may serve and file simultaneous supplemental briefs addressing the effect of *Cunningham*, if any, on the issues presented in this appeal.

Date: APR - 9 2007

PARRILLI, J.

ACTING
P.J.

EXHIBIT IBIT - C

Court of Appeal, First Appellate District, Div. 3 - No. A104274
S140906

IN THE SUPREME COURT OF CALIFORNIA

En Banc

THE PEOPLE, Plaintiff and Respondent,

v.

TERYL A. WILLIAMS, Defendant and Appellant.

Petition for review denied without prejudice to any relief to which defendant might be entitled after the United States Supreme Court determines in *Cunningham v. California*, No. 05-6551, the effect of *Blakely v. Washington* (2004) 542 U.S. 296 and *United States v. Booker* (2005) 543 U.S. 220, on California law.

Corrigan, J., recused and did not participate.

**SUPREME COURT
FILED**

APR 19 2006

Frederick K. Ohlrich Clerk

DEPUTY

GEORGE

Chief Justice

Court of Appeal, First Appellate District, Div. 3 - No. A104274
S154889

IN THE SUPREME COURT OF CALIFORNIA

En Banc

THE PEOPLE, Plaintiff and Respondent,

v.

TERYL WILLIAMS, Defendant and Appellant.

The petition for review is denied.

Corrigan, J., was recused and did not participate.

SUPREME COURT

FILED

SEP 1 2 2007

Frederick K. Ohlrich Clerk

Deputy

GEORGE

Chief Justice

EXHIBIT

D

NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

TERYL A. WILLIAMS, Petitioner,

VS.

CALIFORNIA, RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI
TO THE CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT, DIVISION THREE

MOTION FOR LEAVE TO PROCEED
IN FORMA PAUPERIS

OZRO WILLIAM CHILDS
1622 Fourth St.
Santa Rosa, CA 95404
(707) 527-9911

Counsel of Record for Petitioner,
TERYL A. WILLIAMS

EXHIBIT-E **EXHIBIT**

1 HONORABLE RAIMA H. BALLINGER
2 SUPERIOR COURT STATE OF CALIFORNIA
3 COUNTY OF SONOMA
4 600 Administration Dr., Rm. 203-J
5 Santa Rosa, CA 95403
6 Telephone: (707) 565-2086
7
8
9

FILED

JUL 31 2006

Clerk of the Superior Court of California
County of Sonoma
By LSB
Deputy Clerk

6 SUPERIOR COURT FOR THE STATE OF CALIFORNIA
7 COUNTY OF SONOMA
8
9

10 In re the Matter of

Case No. SCR-32705

11 TERYL A. WILLIAMS
12 for Writ of Habeas Corpus

**ORDER ON PETITION FOR
WRIT OF HABEAS CORPUS**

13
14 Petition for Writ of Habeas Corpus is DENIED. The Petition is without merit, is
15 untimely and raises claims that could have been raised on appeal.
16
17

DATED: JUL 31 2006

Raima Ballinger

18
19 RAIMA H. BALLINGER
20 Judge of The Superior Court
21
22
23
24
25
26
27
28

EXHIBIT - F

EXHIBIT

Copy

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

FILED

AUG 24 2006

Court of Appeal - First App. Dist.
DIANA HERBERT

By _____

DEPUTY

In re TERYL A. WILLIAMS,
on Habeas Corpus.

A114867

(Sonoma County
Super. Ct. No. SCR-32705)

BY THE COURT:¹

The petition for a writ of habeas corpus is denied.

Dated: AUG 24 2006

McGUINNESS, P.J. P.J.

¹ McGuiness, P.J., Pollak, J., & Siggins, J.

EXHIBIT -6

EXHIBIT

S146358

IN THE SUPREME COURT OF CALIFORNIA

En Banc

In re TERYL WILLIAMS on Habeas Corpus

The petition for writ of habeas corpus is denied. (See *In re Dixon* (1953) 41 Cal.2d 756; *In re Swain* (1949) 34 Cal.2d 300, 304; *People v. Duvall* (1995) 9 Cal.4th 464, 474.)

SUPREME COURT
FILED

George, C. J., was absent and did not participate.
Corrigan, J., was recused and did not participate.

APR 11 2007

Frederick K. Ohlrich Clerk

Deputy

MORENO

Acting Chief Justice

EXHIBIT

EXHIBIT-H

SCR-32705
MCR-415138SUPERIOR COURT OF CALIFORNIA, COUNTY OF SONOMA
CRIMINAL DOCKETPage 1
Printed 6/05/2003 9:50Docket ofDE 1 WILLIAMS, TERYL ANTHONY
DOB 03/10/1955 DLN CA N4753898Offense Date: 02/02/2003
DA #: DAR-459732Filed Charges

F PC 459 Pending

F PC 496(a) Pending

Arresting Agency: PETALUMA POLICE DEPARTMENT

Supr Location: Reel:

Agency #: PET-030874

DA Location:

03/10/2003 DE 1CRIMINAL HEARING - 03/13/2003 at 8:30am S2, INFORMATION TO BE FILED
BAIL INVESTIGATION RPT03/13/2003 DE 1 Courtroom Minutes of Department S2HON: R.BALLINGER DDA: Gary A. Medvidgy REP: C A Martinez CLK: LA
Defendant present in custody
Public Defender, appearing
INFORMATION FILED

F PC 459 F PC 496(a)

Defendant's true name is Williams, Teryl A.

Defendant stipulates to due and proper arraignment

Advised of constitutional rights

Defendant waives reading of information

Waives further advisement of rights

Defendant pleads Not Guilty to count I PC 459

Defendant pleads Not Guilty to count II PC 496(a)

Fingerprint form filed

Defense to file motion by 03/19/2003

Defendant does not waive time

Jury Trial Set - 04/28/2003 at 9:30am S2, JURY TRIAL

PRE-TRIAL CONFIRMATION - 04/03/2003 at 2:30pm S2, PRETRIAL

CONFIRMATION, 1538.5PC TO SUPPRESS

CONTINUED TO - 03/19/2003 at 8:30am S2, Filing of motion

03/17/2003 DE 1

TRANSCRIPT OF PRELIMINARY EXAMINATION FILED

SCR-32705 SUPERIOR COURT OF CALIFORNIA, COUNTY OF SONOMA

Page 2

03/19/2003 DE 1 Courtroom Minutes of Department S2

HON: R.BALLINGER DDA: KATHLEEN A. KNOTTS REP: Sandra L. Carranza CLK: LA
Defendant present in custody
Counsel Karen Silver, Public Defender, appearing
Jury Trial Set - 04/28/2003 at 9:30am S2, JURY TRIAL
PRE-TRIAL CONFIRMATION - 04/03/2003 at 2:30pm S2, PRETRIAL
CONFIRMATION, 1538.5PC TO SUPPRESS
1538.5 PC Motion Set - 03/20/2003 at 8:30am S2, 1538.5PC TO SUPPRESS

03/20/2003 DE 1 Courtroom Minutes of Department S2

HON: R.BALLINGER DDA: Alexander J. McMahon REP: F SANDERS CLK: LA
Defendant present in custody
Counsel K Silver, Public Defender, appearing
Jury Trial Set - 04/28/2003 at 9:30am S2, JURY TRIAL
PRE-TRIAL CONFIRMATION - 04/03/2003 at 2:30pm S2, PRETRIAL
CONFIRMATION, 1538.5PC TO SUPPRESS

03/28/2003 DE 1

PEOPLE'S OPPOSITION TO DEFENDANT'S MOTION TO SUPPRESS EVIDENCE
PURSUANT TO PENAL CODE SECTION 1538.5 FILED
PROOF OF PERSONAL SERVICE

04/03/2003 DE 1 Courtroom Minutes of Department S2

HON: R.BALLINGER DDA: Alexander J. McMahon REP: C A Martinez CLK: LA
No file
Defendant present in custody
Counsel K Silver, Public Defender, appearing
1538.5 PC Motion Held 3:47 pm
At 3:27 pm, Marsden Motion held
Courtroom cleared of everyone but Counsel Silver, Defendant, and
Court staff.
Mr. Williams addresses the Court
Counsel Silver addresses the Court
Court's exhibits 1, 2, and 3 marked for ID as follows:
1) Handwritten Pitchess Motion
2) Handwritten Request for Discovery
3) Handwritten Ex-parte request for Marsden Motion
Court's exhibits 1, 2, and 3 are sealed and to be opened only by
Court Officer.
Court does not find sufficient evidence to Grant Marsden Motion
At 3:45 pm, Court is reopened
1538.5 PC Motion Held 3:47 pm
People call Officer Paul Gilman, sworn and testified.
Witness identifies Defendant(s).
Cross examination by Counsel Silver

SCR-32705

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SONOMA

Page 3

04/03/2003 DE 1 Courtroom Minutes of Department S2 (continued)

Defense exhibits A and B, marked for identification: A) picture of rear vehicle, B) picture of rear vehicle

Defense's exhibits received into evidence A and B

Redirect conducted by Counsel McMahan

People's exhibits 1 and 2 marked for Identification as follows:

1) 14 page document

2) 22 page rap sheet of Teryl Williams

People's exhibits 1 and 2 received into evidence.

People rest

Counsel confers with her client

Defense does not present any evidence

Defense waives any irregularities as to continued 1538.5 PC motion

CONTINUED TO - 04/17/2003 at 8:30am S2, MOTION, CONTINUED

Court will accept further case studies up to 04/15/2003

04/15/2003 DE 1

REPORTER'S TRANSCRIPT FILED

04/17/2003 DE 1 Courtroom Minutes of Department S2

HON: R.BALLINGER DDA: Alexander J. McMahon REP: C A Martinez CLK: PJS

Defendant present in custody

Counsel K Silver, Public Defender, appearing

Jury Trial Set - 04/28/2003 at 9:30am S2, JURY TRIAL

PRE-TRIAL CONFIRMATION - 04/18/2003 at 8:30am S2, PRETRIAL
CONFIRMATION, MOTION

04/17/2003 DE 1

CUSTODY INFORMATION TRANSMITTED TO JAIL BY pschulze FOR 4/17/2003
8:30 S2

04/18/2003 DE 1 Courtroom Minutes of Department S2

HON: R.BALLINGER DDA: Alexander J. McMahon REP: C A Martinez CLK: PJS

Defendant present in custody

Counsel K. Silver, Public Defender, appearing

People argue.

Defense argues.

People respond.

Motion is denied

Jury Trial Set - 04/28/2003 at 9:30am S2, JURY TRIAL

Pretrial Conference Held

Readiness Conference Set - 04/25/2003 at 10:00am S2, READINESS
CONFERENCE

SCR-32705 SUPERIOR COURT OF CALIFORNIA, COUNTY OF SONOMA

Page 4

04/25/2003 DE 1 Courtroom Minutes of Department S2

HON: R.BALLINGER DDA: KATHLEEN A. KNOTTS REP: F SANDERS CLK: LA
Defendant present in custody
Counsel K. Silver, Public Defender, appearing
Jury Trial Set - 04/29/2003 at 9:30am S2, FURTHER P T C
Trailing status
Readiness Conference Held
Trial date vacated - 04/28/2003 at 9:30am S2

04/25/2003 DE 1

MOVED TO - 04/29/2003 at 9:30am S2, FURTHER P T C

04/29/2003 DE 1 Courtroom Minutes of Department S2

HON: R.BALLINGER DDA: Alexander J. McMahon REP: C A Martinez CLK: LA
Judge has the file
Defendant present in custody
Counsel K. Silver, Public Defender, appearing
Jury Trial Set - 04/30/2003 at 8:30am S2, ARRAIGNMENT

04/30/2003 DE 1 Courtroom Minutes of Department S2

HON: R.DALE DDA: KATHLEEN A. KNOTTS REP: C A Martinez CLK: LA
To #1 forthwith
JUDGE: RB
DA: AJM
REPORTER: FS
CLERK: KLK
Defendant present in custody
Counsel K. Silver, Public Defender, appearing
Court re-opens after closed hearing at 10:44 a.m. Defense requests
1368 proceedings for reasons stated
Defense files ex-parte request for Marsden hearing
Marsden Motion Held
Marsden Motion DENIED
Defendant Certified Superior Court per 1368 PC to be heard
Jury Trial Vacated
Criminal Proceedings Suspended
CONTINUED TO - 05/01/2003 at 8:30am S2, 1368 PC CERTIFICATION,
FURTHER PROCEEDINGS
Re: appt. of alienist

SCR-32705 SUPERIOR COURT OF CALIFORNIA, COUNTY OF SONOMA

Page 5

05/01/2003 DE 1 Courtroom Minutes of Department S2

HON: R.BALLINGER DDA: Alexander J. McMahon REP: C A Martinez CLK: LA
Defendant present in custody
Counsel S. Fabian, Public Defender, appearing
CONTINUED TO - 05/29/2003 at 8:30am S2, FOR REPORT
Dr. Cushing appointed to examine defendant
Report due 5-27-2003, appointment pursuant to 1368

05/23/2003 DE 1

PSYCHOLOGICAL EVALUATION RECEIVED - Dr. Cushing

05/28/2003 DE 1

ORDER FOR PAYMENT OF EXPERT FEES FILED - Dr. Cushing Report
CERTIFIED COPY OF ORDER FOR PAYMENT SENT TO COURT
ADMINISTRATION - Dr. Cushing Report

05/29/2003 DE 1 Courtroom Minutes of Department S2

HON: R.BALLINGER DDA: KATHLEEN A. KNOTTS REP: C A Martinez CLK: LA
Defendant present in custody
Counsel Karen Silver, Public Defender, appearing
Report from Dr. Cushing filed
Jury Trial Set - 07/14/2003 at 9:30am S2, JURY TRIAL
PRE-TRIAL CONFIRMATION - 07/09/2003 at 8:30am S2, PRETRIAL
CONFIRMATION
CONTINUED TO - 06/03/2003 at 8:30am S2, TO SET
Criminal Proceedings Reinstated

06/03/2003 DE 1 Courtroom Minutes of Department S2

HON: C. WONG DDA: Jerome J Mautner REP: TERI HOSMER CLK: LA
Defendant present in custody
Counsel K Silver, Public Defender, appearing
Jury Trial Set - 07/14/2003 at 9:30am S2, JURY TRIAL
Pre-trial confirmation set - 07/09/2003 at 8:30am S2, PRETRIAL
CONFIRMATION
CONTINUED TO - 06/10/2003 at 8:30am S2, Filing of motion

06/10/2003 DE 1 Courtroom Minutes of Department S2

HON: R.BALLINGER DDA: Jerome J Mautner REP: C A Martinez CLK: LA
Defendant present in custody
Counsel K Silver, Public Defender, appearing
Public Defender relieved
Court signs and files Declaration, Finding and Order re: Self Rep.
in a criminal case
Jury Trial Set - 07/14/2003 at 9:30am S2, JURY TRIAL

SCR-32705 SUPERIOR COURT OF CALIFORNIA, COUNTY OF SONOMA

Page 6

06/10/2003 DE 1 Courtroom Minutes of Department S2 (continued)
Pre-trial confirmation set - 07/09/2003 at 8:30am S2, PRETRIAL
CONFIRMATION
CONTINUED TO - 06/13/2003 at 8:30am S2, FURTHER PROCEEDINGS

06/13/2003 DE 1 Courtroom Minutes of Department S2

HON: R.BALLINGER DDA: TROYE K. SHAFFER REP: C A Martinez CLK: JL
File with Judge B.
Defendant present in custody
Counsel S. Fabian, Public Defender, appearing
Defendant requests transcripts from 4-30-2003, 5-29-2003 - court
states they may be provided to defendant.
Hearing Set - 06/19/2003 at 2:30pm S2, HEARING
CONTINUED TO - 06/16/2003 at 8:30am S2, FURTHER PROCEEDINGS
(re: library access; discovery)
Defendant files misc. motion
People's response by 6-18-2003 5:00 p.m.

06/16/2003 DE 1 Courtroom Minutes of Department S2

HON: R.BALLINGER DDA: TROYE K. SHAFFER REP: C A Martinez CLK: LA
Notice of Motion to Compel Discovery filed
Defendant present in custody
Defendant in Pro Per
Court advises defendant that in the court's opinion it is not a good
idea to represent himself.
CONTINUED TO - 06/19/2003 at 2:30pm S2, HEARING, MOTION
CONTINUED TO - 06/17/2003 at 8:30am S2, FURTHER PROCEEDINGS
(re: law library)

06/17/2003 DE 1 Courtroom Minutes of Department S2

HON: R.BALLINGER DDA: KATHLEEN A. KNOTTS REP: C A Martinez CLK: LA
No file
Defendant present in custody
In pro per
CONTINUED TO - 06/19/2003 at 8:30am S2, FURTHER PROCEEDINGS
(re: law library access)

06/19/2003 DE 1 Courtroom Minutes of Department S2

HON: R.BALLINGER DDA: Jerome J Mautner REP: C A Martinez CLK: MB
Defendant present in custody in Pro Per
Counsel K Silver, Public Defender, appearing
Matter continued to 2:30 pm

SCR-32705 SUPERIOR COURT OF CALIFORNIA, COUNTY OF SONOMA

Page 7

06/19/2003 DE 1 Courtroom Minutes of Department S2

HON: R.BALLINGER DDA: Jerome J Mautner REP: C A Martinez CLK: MB
Defendant present in custody in Pro Per
Counsel K Silver, Public Defender, appearing
The Court orders a transcript of the 06/19/2003 proceedings
995 PC Motion Filed
995 PC Motion Held
995 PC Motion Denied
Motion to Appt. Inv. Filed
Motion to Appt. Inv. Held
Motion to Appt. Inv. Granted
CONTINUED TO - 06/20/2003 at 8:30am S2, FURTHER PROCEEDINGS
Motion re: Discovery and Physical Evidence Held

06/20/2003 DE 1 Courtroom Minutes of Department S2

HON: R.BALLINGER DDA: TROYE K. SHAFFER REP: B L Peterson CLK: MB
Defendant present in custody
Courtroom cleared for in camera hearing for appointment of
investigator.
The court authorizes defendant four completed phone alls to
investigative agencies.
CONTINUED TO - 06/24/2003 at 9:00am S2, FURTHER PROCEEDINGS
(appt. of investigator)

06/24/2003 DE 1 Courtroom Minutes of Department S2

HON: R.BALLINGER DDA: ROBERT J.WANER REP: KAREN THOMPSON CLK: MB
Defendant present in custody in Pro Per
The Court orders four completed telephone calls to investigative
agencies as previously ordered on 06/20/2003.
Jury Trial Set - 07/14/2003 at 9:30am S2, JURY TRIAL
Pretrial Confirmation Set - 07/09/2003 at 8:30am S2, PRETRIAL
CONFIRMATION
CONTINUED TO - 07/02/2003 at 8:30am S2, FURTHER PROCEEDINGS

06/27/2003 DE 1

REPORTER'S TRANSCRIPT FILED PROCEEDINGS

07/02/2003 DE 1 Courtroom Minutes of Department S2

HON: R.BALLINGER DDA: Jerome J Mautner REP: F SANDERS CLK: LA
JUDGE HAS FILE
Defendant present in custody
1st Amended Information filed
Defendant advised of charges/allegations
Stipulates to arraignment

SCR-32705 SUPERIOR COURT OF CALIFORNIA, COUNTY OF SONOMA

Page 8

07/02/2003 DE 1 Courtroom Minutes of Department S2 (continued)

Defendant advised of constitutional rights
Defendant waives reading of information - 1st Amended Information
Defendant pleads Not Guilty to count I PC 459
Defendant pleads Not Guilty to count II PC 496(a)
CONTINUED TO - 07/03/2003 at 8:30am S2, FURTHER PROCEEDINGS

07/03/2003 DE 1 Courtroom Minutes of Department S2

HON: R.BALLINGER REP: F SANDERS CLK: LA
Judge has file
Defendant present in custody in Pro Per
Defendant is to be allowed 4 completed telephone calls to
investigators on Monday
Court Authorizes today 4 compelled telephone calls to investigators.
CONTINUED TO - 07/08/2003 at 9:00am S2, FURTHER PROCEEDINGS

07/08/2003 DE 1 Courtroom Minutes of Department S2

HON: R.BALLINGER REP: C A Martinez CLK: LA
JUDGE HAS FILE
These proceedings are ordered sealed.
Defendant present in custody in Pro Per
Court authorizes completed telephone contact with 664-0327 today.
Jury Trial Set - 07/14/2003 at 9:30am S2, JURY TRIAL
Pretrial Confirmation Set - 07/09/2003 at 8:30am S2, PRETRIAL
CONFIRMATION

07/09/2003 DE 1 Courtroom Minutes of Department S2

HON: R.BALLINGER DDA: Jerome J Mautner REP: C A Martinez CLK: LA
No file
Today's proceedings ordered sealed
Defendant present in custody
Defendant present in custody in Pro Per
Defendant to have complete tele contact with 664-0327 today
Defendant waives time to 07/16/2003 plus 60 days
Vacated - 07/14/2003 at 9:30am S2
CONTINUED TO - 07/16/2003 at 8:30am S2, TO RESET
Defense's 1050 PC Motion Granted
Defendant allowed to view any relevant videotape with his
investigator or in private
CONTINUED TO - 07/11/2003 at 9:00am S2, FURTHER PROCEEDINGS

SCR-32705 SUPERIOR COURT OF CALIFORNIA, COUNTY OF SONOMA

Page 9

07/11/2003 DE 1 Courtroom Minutes of Department S2

HON: R.BALLINGER REP: C A Martinez CLK: LA
These proceedings sealed
Defendant present in custody in Pro Per
Disc. that def. shall be passed to investigator also videotaped
CONTINUED TO - 07/16/2003 at 8:30am S2, TO RESET

07/16/2003 DE 1 Courtroom Minutes of Department S2

HON: R.BALLINGER DDA: Jerome J Mautner REP: C A Martinez CLK: LA
No File
Defendant present in custody in Pro Per
Jury Trial Set - 09/02/2003 at 9:30am S2, JURY TRIAL
Pretrial Confirmation Set - 08/22/2003 at 8:30am S2, PRETRIAL
CONFIRMATION

07/21/2003 DE 1

PROOF OF SERVICE BY MAIL FILED

08/22/2003 DE 1 Courtroom Minutes of Department S2

HON: R.BALLINGER DDA: Jerome J Mautner REP: C A Martinez CLK: LA
Defendant present in custody in Pro Per
P & A's in opposition to suppression of evidence filed
Jury Trial Set - 09/02/2003 at 9:30am S2, JURY TRIAL
Pretrial Conference Held
Readiness Conference Set - 08/29/2003 at 10:00am S2, READINESS
CONFERENCE
CONTINUED TO - 08/28/2003 at 2:30pm S2, MOTION

08/22/2003 DE 1

CUSTODY INFORMATION TRANSMITTED TO JAIL BY lalberts FOR 8/22/2003
8:30 S2

08/28/2003 DE 1

ORDER FOR PAYMENT OF EXPERT FEES FILED - Fees of Investigator
CERTIFIED COPY OF ORDER FOR PAYMENT SENT TO COURT
ADMINISTRATION - Fees of Investigator

08/28/2003 DE 1 Courtroom Minutes of Department S2

HON: Dean A. Beaupre DDA: Jerome J Mautner REP: C A Martinez CLK: LA
INT: ED SALDIVAR - SPANISH
Defendant present in custody
Defense Counsel Bernabe Hernandez appearing
Defense Motions in Limine filed
People are ordered to turn over Discovery consisting of defendant's

SCR-32705

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SONOMA

Page 10

08/28/2003 DE 1 Courtroom Minutes of Department S2 (continued)

rap sheet

Defense Motion to reopen is denied

Jury Trial as Set - 09/02/2003 at 9:30am S2, JURY TRIAL

Readiness Conference as set - 08/29/2003 at 10:00am S2, READINESS CONFERENCE

08/29/2003 DE 1 Courtroom Minutes of Department S2

HON: Phillip Champlain DDA: Jerome J Mautner REP: C A Martinez CLK: LA

Defendant present in custody in Pro Per

Readiness Conference Held

Trial date of 09-02-2003 confirmed

Time estimate 4 days

09/02/2003 DE 1 Courtroom Minutes of Department S2

HON: Robert S. Boyd DDA: TROYE K. SHAFFER REP: KAREN THOMPSON CLK: LA

Defendant present in custody in Pro Per

60th day is 09-16-2003

Jury Trial Set - 09/05/2003 at 10:00am S2, JURY TRIAL
(Trailing status)

09/05/2003 DE 1 Courtroom Minutes of Department S2

HON: C. WONG DDA: Jerome J Mautner REP: SHELLY BERG CLK: PJS

Defendant present in custody in Pro Per

Defendant to be dressed in civilian clothes.

Jury Trial Set - 09/08/2003 at 9:30am S2, JURY TRIAL
trailing status

09/08/2003 DE 1 Courtroom Minutes of Department S2

HON: R. BALLINGER DDA: TROYE K. SHAFFER REP: C A Martinez CLK: LA

Defendant present in custody

Defendant present in custody in Pro Per

Anthony Piazza present addresses the Court.

Complaint amended to reflect date of complaint 7/2/03

People's proposed Witness List is filed

Defense Proof Of Service filed

Jury Trial Set - 09/09/2003 at 9:30am S2, JURY TRIAL

Defendant to provide letter to DA

DROPPED FROM CALENDAR - 09/09/2003 at 9:30am S2

Jury Trial Set - 09/09/2003 at 8:30am S2, JURY TRIAL

SCR-32705 SUPERIOR COURT OF CALIFORNIA, COUNTY OF SONOMA

Page 11

09/09/2003 DE 1 Courtroom Minutes of Department S2

HON: Robert S. Boyd DDA: Jerome J Mautner REP: D M Morin CLK: MB
Case called at 1:30pm in Department S4
Defendant present in custody in Pro Per
Jury Trial Set - 09/10/2003 at 8:30am S4, JURY TRIAL
(trailing status)

09/10/2003 DE 1 Courtroom Minutes of Department S4

HON: Robert S. Boyd DDA: ROBERT J. WANER REP: D M Morin CLK: MB
Defendant present in custody in Pro Per
Mr. Piazza present.
Defendant to be dressed in civilian clothing.
Jury Trial Set - 09/11/2003 at 9:30am S4, JURY TRIAL
(trailing status)

09/11/2003 DE 1 Courtroom Minutes of Department S4

HON: Robert S. Boyd DDA: TROYE K. SHAFFER REP: D M Morin CLK: MB
This cause comes on regularly for commencement of jury trial. At
10:55 a.m., the Court convenes. Troye Shaffer appearing on behalf
of the People. Defendant present in custody, in pro per, with his
investigator, Anthony Piazza.
The Court hears and rules on motions in limine.
The issue of priors is bifurcated.
At 11:56 a.m., the Court declares the noon recess.
At 2:21 p.m., the Court reconvenes. Ms. Shaffer present. Defendant
present in custody. Anthony Piazza present.
The Court continues to hear and rule on motions in limine.
The Court sets the 402 hearing with Ms. Rhone for September 12,
2003 at 1:30 p.m.
The Court continues this matter to September 12, 2003 at 10:00 a.m.
in Department S4 for further jury trial.
CONTINUED TO - 09/12/2003 at 10:00am S4, JURY TRIAL
Defendant to be dressed in civilian clothing.

09/11/2003 DE 1

PEOPLE'S SUPPLEMENTAL MOTIONS IN LIMINE FILED
PEOPLE'S TRIAL BRIEF FILED
DEFENDANT'S PROPOSED WITNESS LIST FILED

SCR-32705

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SONOMA

Page 12

09/12/2003 DE 1 Courtroom Minutes of Department S4

HON: Robert S. Boyd DDA: TROYE K. SHAFFER REP: D M Morin CLK: MB
Cause comes on regularly this date for further jury trial pursuant
to adjournment of September 12, 2003. At 10:09 a.m., the
Court convenes. Troye Shaffer present on behalf of the People.
Defendant present, in pro per. Prospective jurors not present.
Anthony Piazza present.

The Court and counsel discuss legal issues.

At 10:37 a.m., a panel of prospective jurors is summoned into open
Court and sworn as to their qualifications.

The Court outlines the cause to the panel.

The numbers of eighteen prospective jurors are called to fill the
jury box.

Voir dire examination commences.

At 11:56 a.m., the Court admonishes the prospective jurors and declares
the noon recess.

Outside the presence of the prospective jurors, the Court and counsel
discuss legal issues.

At 11:58 a.m., the Court declares the noon recess.

At 1:43 p.m., the Court reconvenes. Ms. Shaffer present. Defendant
present in custody with his investigator Mr. Piazza.

Prospective jurors not present.

Outside the presence of the jurors, the Court and counsel discuss
the comments of Juror #1858.

The defendant waives any right to appeal regarding the comments of
Juror #1858.

402 Hearing

Galara Rhone is sworn and refuses answer questions, asserting her
Fifth Amendment rights.

The witness steps down.

The Court and counsel discuss legal issues.

The Court and counsel discuss Juror #1728.

At 2:08 p.m., the prospective jurors are summoned into open Court.

Voir dire of prospective jurors continues.

At 2:17 p.m., the Court reminds the prospective jurors of their
admonishment and declares a brief recess.

Outside the presence of the prospective jurors, the Court and
counsel discuss challenges for cause.

At 2:22 p.m., the prospective jurors are summoned into open Court.

Voir dire continues.

At 2:45 p.m., the Court reminds the prospective jurors of their
admonishment and declares a brief recess.

Outside the presence of the prospective jurors, the Court and
counsel discuss challenges for cause.

At 2:48 p.m., the prospective jurors are summoned into open Court.

Voir dire continues.

Peremptory challenges having been exercised and both sides now

SCR-32705

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SONOMA

Page 13

09/12/2003 DE 1 Courtroom Minutes of Department S4 (continued)

being satisfied, the following jurors are sworn to try the cause:
1. #1892 2. #1777 3. #1891 4. #1834 5. #1868
6. #1733 7. #1693 8. #1712 9. #1742 10. #1872
11. #1815 12. #1893.

Peremptory challenges having been exercised and both sides now being satisfied, the following alternate juror is sworn to try the cause: #1897

At 2:54 p.m., the Court reminds the jurors of their admonishment and declares a brief recess.

Outside the presence of the jurors, the Court and counsel discuss legal issues.

At 3:20 p.m., the Court reconvenes. Counsel present. Defendant present in custody. Jurors not present. Mr. Piazza present.

Outside the presence of the jurors, the Court and counsel discuss legal issues.

At 3:22 p.m., the jurors are summoned into open Court.

Court pre-instructs jury

At the direction of the Court, the clerk reads the Information.

At 3:47 p.m., the Court reminds the jurors of their admonishment and declares a recess until September 15, 2003 at 10:30 a.m. in Department S4 for further jury trial.

Outside the presence of the jurors, the Court and counsel discuss legal issues.

Counsel directed to return at 10:00 a.m.

The Court stands adjourned.

Defendant to be dressed in civilian clothing.

CONTINUED TO - 09/15/2003 at 10:00am S4, JURY TRIAL

09/15/2003 DE 1 Courtroom Minutes of Department S4

HON: Robert S. Boyd DDA: TROYE K. SHAFFER REP: KAREN THOMPSON CLK: MB

Cause comes on regularly this date for further jury trial pursuant to adjournment of September 12, 2003. At 10:08 a.m., the Court convenes. Troye Shaffer present on behalf of the People.

Defendant present in custody, in pro per. Anthony Piazza, present. Jurors not present.

Outside the presence of the jurors, The Court and counsel discuss legal issues.

At 10:36 a.m., the jurors are summoned into open Court.

OFFICER PAUL GILMAN, Petaluma Police Department, is sworn and testifies on behalf of the People.

The following People's exhibits are marked for identification:

1. Large Map
2. Small Map

The witness identifies defendant.

The following People's exhibits are marked for identification:

3. Small Color Photo

SCR-32705

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SONOMA

Page 14

09/15/2003 DE 1 Courtroom Minutes of Department S4 (continued)

4. Small Color Photo
5. Small Color Photo
6. Small Color Photo
7. Small Color Photo
8. Small Color Photo
9. Small Color Photo
10. Small Color Photo
11. Small Color Photo
12. Small Color Photo
13. Small Color Photo
14. Officer Gilman's Report
15. Checks
16. Copies of Checks

Cross examination

The following defendant's exhibits are marked for identification:

- A. Small Map
- B. Small Color Photo
- C. Small Color Photo
- D. Small Color Photo
- E. Small Color Photo
- F. Small Color Photo
- G. Small Color Photo
- H. Small Color Photo

Redirect

The People's Exhibit 17, CLETS Response Document, is marked for identification.

The witness steps down.

At 12:03 p.m., the Court reminds the jurors of their admonishment and declares the noon recess.

Outside the presence of the jurors, the Court and counsel discuss legal issues.

At 12:05 p.m., the Court declares the noon recess.

At 1:37 p.m., the Court convenes. Counsel present. Defendant present in custody in pro per. Mr. Piazza not present. Jurors not present.

Outside the presence of the jurors, the Court and counsel discuss legal issues.

At 1:41 p.m., the jurors are summoned into open Court.

DANIEL TORLIATT is sworn and testifies on behalf of the People.

The following People's exhibits are marked for identification:

18. Copy of Coins
19. Copy of Coins
20. Small Photo

Cross examination

The Defendant's Exhibit I, Polaroid Photo, is marked for identification.

Redirect

SCR-32705

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SONOMA

Page 15

09/15/2003 DE 1 Courtroom Minutes of Department S4 (continued)

The witness steps down.

DETECTIVE ROBERT BARNES, Petaluma Police Department, is sworn and testifies on behalf of the People.

The following People's exhibits are marked for identification, offered and received in evidence:

21. Small Color Photo
22. Small Color Photo
23. Small Color Photo
24. Small Color Photo
25. Small Color Photo
26. Small Color Photo
27. Small Color Photo
28. Small Color Photo
29. Large Color Photo
30. Large Color Photo
31. Large Color Photo
32. Large Color Photo
33. Large Color Photo

The People's Exhibit 34, Oakland Newspaper, is marked for identification.

The following People's exhibits are marked for identification, offered and received in evidence:

35. Large Color Photo
36. Large Color Photo
37. Large Color Photo
38. Large Color Photo
39. Large Color Photo
40. Large Color Photo

The following People's exhibits are marked for identification:

41. Large Color Photo
42. Large Color Photo
43. Large Color Photo
44. Large Color Photo
45. Large Color Photo
46. Large Color Photo
47. Large Color Photo
48. Large Color Photo
49. Large Color Photo

The following People's exhibits are marked for identification, offered and received in evidence:

50. Fingerprint Card
51. Fingerprint Card

At 3:04 p.m., the Court reminds the jurors of their admonishment and declares a brief recess.

Outside the presence of the jurors, the Court and counsel discuss legal issues.

At 3:05 p.m., the Court declares a brief recess.

SCR-32705

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SONOMA

Page 16

09/15/2003 DE 1 Courtroom Minutes of Department S4 (continued)

At 3:20 p.m., the Court reconvenes. Counsel present. Defendant present in custody. Mr. Piazza present. Jurors present. DETECTIVE ROBERT BARNES, previously sworn, resumes the stand and further testifies.

Cross examination

The following defendant's exhibits are marked for identification:

J. Evidence Sheet

K. Report

The witness steps down.

DETECTIVE FROILAN MARISCAL, Petaluma Police Department, is sworn and testifies on behalf of the People.

CONTINUED TO - 09/17/2003 at 10:00am S4, JURY TRIAL

The following People's exhibits are marked for identification:

52. Large Color Photo

53. Large Color Photo

54. Large Color Photo

55. Large Color Photo

56. Large Color Photo

57. Large Color Photo

58. Large Color Photo

59. Large Color Photo

60. Glove

61. Glove

62. Glove

63. Glove

64. Glove

The People's Exhibits 55 and 56, previously marked for identification, are offered and received in evidence.

The following People's exhibits are marked for identification:

65. Packet of Documents

66. Bolt Cutters

67. Tire Iron

68. Tire Iron

69. Pry Tool

70. Tire Iron

71. Tire Iron

The witness steps down.

At 4:27 p.m., the Court reminds the jurors of their admonishment and declares a recess until September 17, 2003 at 10:30 a.m. in Department S4 for further jury trial.

Outside the presence of the jurors, the Court and counsel discuss legal issues.

The Court directs all parties to appear September 17, 2003 at 10:00 a.m.

At 4:32 p.m., the Court stands adjourned.

Defendant to be dressed in civilian clothes September 17, 2003.

SCR-32705 SUPERIOR COURT OF CALIFORNIA, COUNTY OF SONOMA

Page 17

09/15/2003 DE 1

PEOPLE'S PROPOSED JURY INSTRUCTIONS FILED

09/17/2003 DE 1 Courtroom Minutes of Department S4

HON: Robert S. Boyd DDA: TROYE K. SHAFFER REP: KAREN THOMPSON CLK: MB
Cause comes on regularly this date for jury trial pursuant to adjournment of September 15, 2003. At 10:35 a.m., the Court convenes. Troye Shaffer present on behalf of the People. Defendant present in custody, in pro per. Jurors not present. Anthony Piazza present.

Outside the presence of the jurors, the Court and counsel discuss legal issues.

DETECTIVE FROILAN MARISCAL, Petaluma Police Department, is sworn and testifies on behalf of the People.

Cross examination

The following defendant's exhibits are marked for identification:

L. Small Color Photo
M. Small Color Photo
N. Small Color Photo
O. Small Color Photo
P. Small Color Photo
Q. Small Color Photo
R. Small Color Photo
S. Small Color Photo

The witness steps down.

At 11:55 a.m., the Court reminds the jurors of their admonishment and declares the noon recess.

Outside the presence of the jurors, the Court and counsel discuss legal issues.

At 12:02 p.m., the Court declares the noon recess.

Courtroom Clerk Patty Schulze replaces Courtroom Clerk Marietta Betts.

At 1:35 p.m., the Court convenes, on the record, outside the presence of the jury. All other parties present. Discussions held. At 1:45 p.m., the jury is summoned into open Court. All present.

People call BRIAN BAILEY, sworn and testified.

Cross examination

Witness steps down

People's exhibit 72, marked for identification: Document

People's exhibit 72 received into evidence.

The Court reads Exhibit 72 to the jury.

At 1:55 p.m., Court declares a recess. Court admonishes the jury.

At 2:12 p.m., the Court reconvenes, on the record, outside the presence of the jury. Discussions held.

At 2:15 p.m., jury is summoned into open Court. All present.

Defendant makes an opening statement

Defendant is sworn and testifies on his own behalf.

SCR-32705

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SONOMA

Page 18

09/17/2003 DE 1 Courtroom Minutes of Department S4 (continued)

Defense exhibit T, marked for identification: Document - Copy of Property List

Cross examination

At 3:00 p.m., Court declares a recess: Jury admonished.

People's exhibit 73, premarked for identification: Small Color Photo

At 3:17 p.m., the Court reconvenes. All parties and jury present.

MR. WILLIAMS, heretofore sworn, resumes the stand.

Defendant identifies People's Exhibit 73.

Cross examination continues.

Redirect

Defense exhibit U, marked for identification: Documents

Defense exhibit V, marked for identification: Document

Witness steps down

Defense calls OFFICER KEVIN SIMMONS, sworn and testified

Cross examination

Witness steps down

Defense calls ANTHONY PIAZZA, sworn and testified

The following defense exhibits are marked for identification:

W. Small Color Photo

X. Small Color Photo

Y. Small Color Photo

Z. Small Color Photo

AA. Small Color Photo

BB. Small Color Photo

CC. Small Color Photo

DD. Small Color Photo

EE. Small Color Photo

At 4:30 p.m., the Court declares a recess. Jury admonished. Case continued to September 18, 2003 at 10:00 a.m. in Department S4.

CONTINUED TO - 09/18/2003 at 10:00am S4, JURY TRIAL

09/17/2003 DE 1

CUSTODY INFORMATION TRANSMITTED TO JAIL BY pschulze FOR 9/17/2003

10:00 S4

TRIAL CONTINUES TO 09/18/2003, 10:00AM, S4

09/18/2003 DE 1 Courtroom Minutes of Department S4

HON: Robert S. Boyd DDA: TROYE K. SHAFFER REP: KAREN THOMPSON CLK: MB
Cause comes on regularly this date for jury trial pursuant to adjournment of September 17, 2003. at 10:34 a.m., the Court convenes. Troye Shaffer present on behalf of the People. Defendant present in custody, in pro per. Jurors not present Mr.Piazza present

Outside the presence of the jurors, the Court and counsel discuss jury instructions.

SCR-32705

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SONOMA

Page 19

09/18/2003 DE 1 Courtroom Minutes of Department S4 (continued)

At 10:40 a.m., the jurors are summoned into open Court.

Defense calls ANTHONY PIAZZA, sworn and testified

At 10:55 a.m., the Court reminds the jurors of their admonishment and declares a brief recess.

Outside the presence of the jurors, the Court and counsel discuss legal issues.

At 11:16 a.m., the jurors are summoned into open Court.

The Court reads the stipulations for the record.

At 11:17 a.m., the Court reminds the jurors of their admonishment and declares the noon recess.

Outside the presence of the jurors, the Court and counsel discuss jury instructions.

The Court's Exhibit 1, Stipulation, is marked for identification. The People withdraw Exhibit 14.

People's exhibit 1 through 20, 33, 41 through 44, 45 through 49, 52 through 54, 57 through 71, and 73 are admitted into evidence.

The Defendant's Exhibit A through T and X through EE are admitted into evidence.

The Defendant's Exhibit U is withdrawn.

At 1:35 p.m., the Court reconvenes. Counsel present. Defendant present in custody. Jurors not present. Mr. Piazza present.

Outside the presence of the jurors, the Court and counsel discuss legal issues.

At 1:37 p.m., the jurors are summoned into open Court.

The court instructs jury.

Ms. Shaffer presents her closing arguments on behalf of the People.

Mr. Williams presents his closing arguments.

Ms. Shaffer presents her final arguments.

The Court reads the final jury instructions.

At 3:07 p.m., the bailiff is sworn to take charge of the jury.

The jurors retire to commence deliberation.

At 3:08 p.m., the Court reminds the alternate juror of her admonishment and thanks and excuses her until further notice.

Outside the presence of jurors, the Court and counsel discuss legal issues.

Counsel and defendant stipulate the bailiff may excuse and reconvene the jurors.

People rest At 3:12 p.m., the Court stands in recess.

At 4:35 p.m., the bailiff advises the jurors have left for the day and will return September 19, 2003 at 10:30 a.m. in Department S4.

CONTINUED TO - 09/19/2003 at 10:30am S4, JURY TRIAL

09/18/2003 DE 1

JURY INSTRUCTIONS GIVEN BY COURT FILED

CUSTODY INFORMATION TRANSMITTED TO JAIL BY mbetts FOR 9/18/2003

10:00 S4

SCR-32705 SUPERIOR COURT OF CALIFORNIA, COUNTY OF SONOMA

Page 20

09/19/2003 DE 1

VERDICTS FILED

VERDICT FORMS NOT USED FILED

TRIAL COMPLETED - 6 Day(s)

09/19/2003 DE 1 Courtroom Minutes of Department S4

HON: Robert S. Boyd DDA: TROYE K. SHAFFER REP: KAREN THOMPSON CLK: MB
 Cause comes on regularly this date for jury trial pursuant to adjournment of September 18, 2003.

Bailiff Mark Mauldin is sworn to take charge of the jurors.
 At 10:35 a.m., the bailiff advises all jurors are present and continue deliberations in the jury room.

At 11:37 a.m., the Court convenes. Counsel present. Defendant present in custody, in pro per. Jurors not present. Mr. Piazza not present.

Outside the presence of the jurors, the Court and counsel discuss legal issues.

At 12:01 p.m., the jurors are summoned into open Court.

The jury, through its foreperson, Juror #1712, renders the verdicts which are read by the clerk, affirmed as read and made a part of the Court's record:

We, the Jury, find the defendant, TERYL ANTHONY WILLIAMS, Guilty of violation of Section 459 of the Penal Code, a felony, to wit, SECOND DEGREE COMMERCIAL BURGLARY, as alleged in Count I of the First Amended Information.

DATED: 9/19/03 #1712

We, the Jury, find the defendant, TERYL ANTHONY WILLIAMS, Guilty of violation of Section 496(a) of the Penal Code, a felony, to wit, RECEIVING STOLEN PROPERTY, as alleged in Count II of the First Amended Information.

DATED: 9/19/03 #1712

At 12:05 p.m., the Court excuses the jurors into the hallway.
 Outside the presence of the jurors, the Court and counsel discuss legal issues.

The defendant waives jury trial on the priors.

At 12:08 p.m., the jurors are summoned into open Court.

The Court thanks and excuses the jurors.

Defendant admits the following priors on the record as follows:

Strike(s) 1170.12 Dated 12-17-84 Admitted

Prison Prior(s) 667.5(b) Dated 1-5-98 Admitted

Prison Prior(s) 667.5(b) Dated 3-4-93 Admitted

Prison Prior(s) 667.5(b) Dated 1-17-90 Admitted

Prison Prior(s) 667.5(b) Dated 12-17-84 Admitted

Prison Prior(s) 667.5(b) Dated 9-14-82 Admitted

Prison Prior(s) 667.5(b) Dated 1-3-79 Admitted

Case Referred to Probation Department for RPO Re: Presentence

SCR-32705

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SONOMA

Page 21

09/19/2003 DE 1 Courtroom Minutes of Department S4 (continued)

CONTINUED TO - 10/16/2003 at 9:00am S4, RPO/PRESENTENCE

Report due 10-9-2003

The Court stands adjourned.

***** End of Docket *****

EXHIBIT I

Petaluma Police Department
969 Petaluma Blvd. North, Petaluma, Ca. 94952
Phone Number (707) 778-4372 **Fax: (707) 778-4501**
Patrick T. Parks, Chief of Police

Date & Time of Incident :	Type of Incident <input checked="" type="checkbox"/> Traffic Collision <input type="checkbox"/> Crime	Report Number (If Known) X(B-874	
Location of Incident:			
Name of Person Involved: TYREL WILLIAMS			
(Check one or more boxes to indicate type of party involved)			
<input type="checkbox"/> Person Involved Driver, Passenger, Pedestrian, Victim <input type="checkbox"/> Attorney		<input type="checkbox"/> Insurance Representative <input type="checkbox"/> Authorized Individual (Signed authorization required)	<input type="checkbox"/> Property Owner <input type="checkbox"/> Parent/Guardian of Juvenile
<input type="checkbox"/> Other Party of Interest: (Specify)			
THIS REPORT IS FOR INFORMATION PURPOSES ONLY DO NOT USE FOR LEGAL PURPOSES			
→	Please call will call		← Name or Agency Name
→			← Address
→	Attention:		← City, State, Zip
→			Court Appointed Investigator
I declare under the penalty of perjury that.... <input type="checkbox"/> I am <input checked="" type="checkbox"/> I represent <input type="checkbox"/> I am an attorney representing...the party of interest in the report requested.			
Signature: <i>E. Patterson Parks</i>			
Today's Date: 8-25-03	Phone Number: 707-664-0327 <input type="checkbox"/> Business <input type="checkbox"/> Home	Agency Represented (if applicable) PRIVATE INV. APPOINTED FOR DEFENSE BY JUDGE	
PPD Case Status: 010 - NOT INDEXED/INDEXED/NOT INDEXED			
Report Number	Person Releasing	Date Released	Method of Release

EXHIBIT J

So your motion is denied at this point.

MS. SILVER: And, Your Honor --

THE COURT: Yes?

4 MS. SILVER: I would actually ask the Court
5 to, at this time, have -- institute 1368 proceedings.
6 I don't feel Mr. Williams is able to cooperate with
7 counsel. I also don't feel he's even acting in his own
8 best interest. Just moments ago, before we came over
9 to this department, he's known all along that this case
10 was set for jury trial. That's been at his request.
11 And just moments -- we were sent over here, he said, "I
12 never asked for this jury trial."

20 MS. SILVER: Thank you.

21 THE DEFENDANT: Your Honor? Your Honor?

22 (Courtroom opened to public.)

23 (End of Marsden motion.)

24

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SONOMA

HON. ROBERT P. DALE, JUDGE

COURTROOM TWO

THE PEOPLE OF THE STATE) NO. SCR-32705
OF CALIFORNIA.)

Plaintiffs,

V.

TERYL ANTHONY WILLIAMS

Defendant

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Wednesday, April 30, 2003

Appearances:

For the People:

STEPHAN R. PASSALACQUA
District Attorney
212-J Hall of Justice
Santa Rosa, California 95403

By: ALEXANDER J. McMAHON
Deputy District Attorney

For the Defendant:

LOUIS S. HAFFNER
Public Defender
106-J Hall of Justice
Santa Rosa, California 95403

By: KAREN SILVER
Deputy Public Defender

Reported by:

FRAN GI SANDERS, CSR NO. 6071

1 SANTA ROSA, CALIFORNIA

10:03 A.M.

2 - - -

3 THE COURT: All right. This is the matter
4 of People versus Teryl Anthony Williams.

5 Mr. Williams, I'm Judge Dale. The matter's
6 been transferred into this courtroom for possible jury
7 trial. But before we do that, I see you filed a
8 Marsden motion here, so I'm going to hear what you have
9 to say.

10 Give me a little bit of time here so I can
11 read what you've written down. I see you've spent some
12 time writing this down. Let me read this first, and
13 then I'll hear what you have to say.

14 (Reviewing.)

15 (Marsden motion had, reported, transcribed
16 and bound separately.)

17 - - -

18 THE COURT: We're back on the record, in
19 open court, in the matter of People versus Williams and
20 Rone. All parties are present, to include Ms. Rone and
21 her attorney. The People are represented by Deputy
22 District Attorney Bud McMahon.

23 The Court has just concluded a Marsden
24 motion in camera, actually in a closed courtroom with
25 only the essential participants available.

26 Court has denied the motion. Ms. Silver
27 started to make a separate motion, and I indicated it
28 would be best to have it made in open court since it

1 may have some bearing on the co-defendant as well.

2 Ms. Silver?

3 MS. SILVER: Yes, Your Honor. I'd ask the
4 Court to suspend proceedings on behalf of Mr. Williams
5 in that I don't feel he's competent to assist counsel
6 with these proceedings. Again, I'll give the Court an
7 example. We've been set in a trailing position for
8 jury trial all week. We've had readiness conferences.
9 And just five minutes before we came over to this
10 courtroom, Mr. Williams informed me he never asked for
11 a jury trial, which led me to believe he wanted a Court
12 trial. But regardless, it's an example of the type of
13 cooperation I've had from Mr. Williams all along. He's
14 unable to carry on communications with me of any kind
15 of a helpful manner regarding his case, and I'm asking
16 the Court to have him evaluated by a forensic
17 psychologist and psychiatrist.

18 THE COURT: Can you be more specific?

19 Obviously, the ability to cooperate with counsel has
20 bearing on the 1368, and you just made that one
21 mention. Are there any other factors that you can
22 bring to the Court's attention?

23 MS. SILVER: Well, that -- that he spent a
24 good -- he spent a good deal of time talking with the
25 Court and me, as well bringing up the same issues, for
26 example, regarding discovery, regarding motions I
27 should be making, which were dealt with even by the
28 Court with him in regards to the -- how the grounds for

1 those motions and I am under an obligation not to file
2 those. He spends his time talking about that and
3 getting upset about that, rather than helping me to get
4 ready for the case and work on his defense.

5 He's -- He's -- I'd say at least three of
6 the last four meetings I've had with him, I've had to
7 leave because he won't stop yelling. And again, we
8 don't get to talk about the substance of the case, but
9 something simply he's mad about, like I didn't file the
10 motion, and it can't get beyond that context.

11 So -- not to mention the fact he said he
12 never asked for a jury trial, and we've been -- I don't
13 know how many times we met in court, and it's been very
14 clear this is on its way to a jury trial.

15 THE COURT: All right. That's at least
16 sufficient at this point, as to this co-defendant, to
17 suspend proceedings pursuant to Section 1368. And I
18 will do this. This is a case I've called at the
19 request of Judge Ballinger. So what I'm going to do at
20 this point is return the case to her tomorrow morning
21 at the 8:30 calendar, and criminal proceedings will be
22 suspended with regards to Mr. Williams at this point.

23 And just so the record is clear, the jury
24 trial is still set as to Ms. Rone, and so that puts her
25 in a position, at least ostensibly at this point, of
26 going to jury trial.

27 MS. THISTLETHWAITE: Your Honor --

28 THE COURT: Unless --

1 MS. THISTLETHWAITE: Ms. Rone -- I've
2 explained to her the potential situation. She is
3 still -- she's prepared to waive time. What my request
4 is, is that we go over to Department Two tomorrow, that
5 an alienist will be assigned. It will probably be
6 three weeks for the report and then another, I don't
7 know, two or three days after that. But we give my
8 client a day to come back for setting in approximately
9 3 1/2 weeks, four weeks, and she would waive time to
10 that date plus 90 days.

11 THE COURT: The only question I have, and
12 this is up to Mr. McMahon, obviously, if he wants to
13 keep the jury trial date intact, vacate it now or
14 consider that tomorrow morning. I just want to make
15 the record clear since I'm suspending proceedings with
16 regards to this one. Ms. Rone is still ostensibly set
17 for jury trial, so that's up to you at this point.

18 MR. McMAHON: Thank you, Your Honor. With
19 counsel's representation that Ms. Rone will enter into
20 a time waiver, we'll ask the trial date be vacated.

21 THE COURT: Would you take that from her,
22 personally, on the record, please?

23 MS. THISTLETHWAITE: Ms. Rone, you have the
24 right to have your jury trial within 60 days of the
25 date you enter your plea, and in the trial department.
26 That is a right you can waive, however.

27 Do you waive that right so your case can be
28 recalled in approximately four weeks for setting and

1 that your trial can be held within 90 days of the
2 setting date?

3 DEFENDANT RONE: Yes, that's fine.

4 THE COURT: Very well. The trial date is
5 vacated, and the criminal proceedings are suspended
6 with respect to Mr. Williams pursuant to 1368. The
7 matter will be returned to Judge Ballinger tomorrow
8 morning, May 1st, 8:30, for further proceedings
9 consistent with 1368.

10 MS. THISTLETHWAITE: And, Your Honor, my
11 client, she's coming -- and has been coming -- from the
12 South Bay. Could she have a date to return in
13 approximately four weeks?

14 THE COURT: Any objection, Mr. McMahon?

15 MR. McMAHON: No.

16 THE COURT: All right. Approximately four
17 weeks. We'll put her matter back on in front of
18 Judge Ballinger the morning of May the 28th at 8:30.
19 Does that work?

20 MS. THISTLETHWAITE: Yes, it does.

21 MS. SILVER: Thank you.

22 THE COURT: And I'll return this to you.

23 And this Court is in recess this morning.
24 Thank you, all.

25 (Proceedings adjourned to May 1, 2003 at
26 8:30 a.m. in Department Two.)

27 - - -

1 REPORTER'S CERTIFICATE

2 COUNTY OF SONOMA)
3 STATE OF CALIFORNIA) ss:

4 I, FRAN GI SANDERS, an Official Court
5 Reporter of the Superior Court of the State of
6 California, County of Sonoma, do hereby certify that I
7 correctly reported the within-entitled matter and that
8 the foregoing is a full, true and correct transcription
9 of my shorthand notes of the testimony and other oral
10 proceedings had in the said matter.

11 Dated this 17th day of November 2003 at
12 Santa Rosa, California.

13
14
15 FRAN GI SANDERS, CSR No. 6071
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT K
EXHIBIT

ORIGINAL

1 SUPERIOR COURT OF CALIFORNIA

2 COUNTY OF SONOMA

3 HONORABLE RAIMA H. BALLINGER, JUDGE

4
5 **FILED**6 PEOPLE OF THE STATE OF CALIFORNIA,)
7 Plaintiff,)
8 vs.)
9 TERYL ANTHONY WILLIAMS,)
10 Defendant.)

11 JUN 27 2003

12 Clerk of the Superior Court of California
13 County of Sonoma
14 By *[Signature]* Deputy Clerk15 Case No.: SCR-32705
16 Date: April 30, 2003
17 May 1, 2003
18 May 29, 2003
19 June 13, 2003
20 Time: 8:30 a.m.
21 Courtroom: 222 PROCEEDINGS23 **A P P E A R A N C E S**

24 For the People:

25 Stephan Passalacqua
26 District Attorney
27 By: ALEXANDER McMAHON, ESQ.
28 By: TROYE SHAFFER, ESQ.
212-J Hall of Justice
212-J Hall of Justice
Santa Rosa, CA 95403

For the Defendant:

Louis Haffner
Public Defender
By: KAREN SILVER, ESQ.
By: STEVE FABIAN, ESQ.
111-J Hall of Justice
Santa Rosa, CA 9540325 CARLOS A. MARTINEZ
26 OFFICIAL SHORTHAND REPORTER #10620
27 600 ADMINISTRATION DRIVE
28 ROOM 218-J
SANTA ROSA, CA 95403
(707) 565-2390

Wednesday, April 30, 2003

THE COURT: Ms. Thistlethwaite, why don't we start with Mr. -- Mr. Williams is here and Ms. Rhone. Is Ms. Rhone present?

MS. THISTLETHWAITE: Yes, she is. But we need Ms. Silver for that, and she's not here. I'm sorry. We need Mr. McMahon and he's not here. But we can start with Mr. Turner who is here.

MS. SILVER: And to let the Court know, I believe
Mr. Williams has a motion that he wants to run.

THE COURT: It's going to be in another department, whatever motion that wants to be.

(THE MATTER WAS PASSED)

THE COURT: I now have Mr. McMahon here. And Mr. Williams is here? And we also have Ms. Rhone here if she'll come forward. This matter trailed today for jury trial. It's going to be transferred to department No. 1 for proceedings in that department.

So --

MS. SILVER: So --

THE COURT: We need to have one of you, Mr. McMahon, do you want to take the file over there? Judge Dale has already reviewed it. He knows it's coming.

MS. THISTLETHWAITE: Should we go over there right now? I do have a 9 o'clock sentencing.

THE COURT: Why don't you go check in with department No. 1 and get going on that and we'll have Mr. Williams

1 transferred over there.

2 (THE MATTER WAS TRANSFERRED TO DEPARTMENT 1)

3 ///

4 ///

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

Thursday, May 1, 2003

MR. McMAHON: Your Honor, we're ready on the Williams matter, Tervl Williams.

THE COURT: Mr. Williams is present.

It's my understanding that today I'm to be appointing
an alienist --

MR. McMAHON: That's correct.

THE COURT: -- to talk to Mr. Williams.

MR. McMAHON: Pursuant to 1368 proceedings, Your Honor, Ms. Silver and I did discuss yesterday an alienist, and we were going to suggest to the Court Dr. Cushing, if that would be fine.

THE COURT: All right. The Court will appoint Dr. Cushing to speak with Mr. Williams. And --

MR. McMAHON: The codefendant is back for setting, I believe, on the 29th, so we want to wrap this up by then.

THE COURT: The Court will have this matter back on calendar on May 29th to discuss this report at 8:30 in the morning. The report from Dr. Cushing will be due on May 27th. That gives us enough time to have read it.

MR. McMAHON: Thank you.

(THE PROCEEDINGS WERE CONCLUDED)

///

111

Thursday, May 29, 2003

THE COURT: I want to call Mr. Williams who is also back. Tervil Williams.

We have his file, the codefendant was on yesterday.
So do we still have that file around?

Ms. Thistlethwaite, did we bring your client, back
Ms. Rhone, from yesterday?

MS. THISTLETHWAITE: No, we didn't. We set her.

THE COURT: Oh, we set her?

MS. SILVER: Yeah.

THE COURT: The Court -- this is concerning Mr. Williams. Mr. Williams is present in custody. Ms. Knotts, are you appearing?

MS. KNOTTS: I can. This is Mr. McMahon's case, but I
can.

THE COURT: All right. We do have a receipt from Dr. Cushing and are you going to --

MS. SILVER: Submitted.

THE COURT: -- submit it?

Are you submitting it?

MS. KNOTTS: Yes, Your Honor.

THE COURT: Criminal proceedings are reinstated.

MS. SILVER: Mr. Williams does have a motion he would like to make. He would like to make a Faretta motion. And at this point I'd like the Court to know that he would like to represent himself.

THE COURT: There's a full Faretta waiver that he has

1 to fill out before I'll consider that.

2 MS. SILVER: Do you want to set it for another date?

3 THE COURT: Yes. He needs time to fill out the
4 Farettta waiver. It's quite detailed. And I need a lot of
5 information on there before I consider this given the gravity of
6 the situation.

7 So the Court will place the matter back on calendar
8 on -- we can do it June 3rd, 8:30 in the morning. That will be
9 to set his jury trial.

10 MS. SILVER: And at this time --

11 MS. THISTLETHWAITE: Actually, I think the dates for
12 jury trial are set.

13 THE COURT: I don't have the minutes.

14 MS. KNOTTS: It's July 14th.

15 THE COURT: Oh, I do have the minutes. July 14th at
16 9:30 for jury trial.

17 MS. THISTLETHWAITE: And I have a specially set jury
18 trial.

19 THE COURT: I'm going to keep them together. July
20 9th, 8:30 for pretrial. And that is within the -- that's within
21 the 60 calendar days. And we'll talk about whether or not he
22 gets to represent himself on Tuesday morning at 8:30.

23 MS. SILVER: Do you have that Farettta questionnaire?

24 THE COURT: I do.

25 MS. SILVER: I'll give it to him so he can fill out
26 before we come back.

27 (THE PROCEEDINGS WERE CONCLUDED)

28 ///

1 Friday, June 13, 2003
2
3

THE COURT: I'll call Mr. Williams' case.

Mr. Williams, I placed you on calendar today in order to talk to some administrative person in the jail about your request for law library access, and I don't yet have a response from them. So I'm intending on putting this over till probably Tuesday, and then I should have more information for you.

THE DEFENDANT: Your Honor, I would like to make a motion, though. I would like to make a motion. I'd like to make a violation motion. And, Your Honor --

THE COURT: Okay. I can't hear you.

THE DEFENDANT: Your Honor, I would like to file this motion right here, and I would like to order the transcript. I can prepare myself the 995 motion. I would like to order the transcript for --

THE COURT: A transcript of what?

THE DEFENDANT: April 30th, May the 1st, and May the 29th.

THE COURT: And why do you need those transcripts?

THE DEFENDANT: I need these to prepare myself -- I want to file a 995 motion.

THE COURT: Well, a 995 motion goes just to the preliminary hearing.

THE DEFENDANT: Well, Your Honor, I had a hearing, okay, and this is what I want to file my 995 motion on. I had a competency hearing.

THE COURT: You had a what?

1 THE DEFENDANT: I had a competency hearing.
2

2 THE COURT: Yeah. That doesn't have anything to do
3 with a 995 motion.

4 THE DEFENDANT: Okay. Basically what I want to do,
5 Your Honor, okay, the Court's is basing a violation of speedy
6 rights trial. Okay. They went way past my trial date, over my
7 trial date. Okay. At this time they're way over my trial date.

8 THE COURT: They suspended criminal proceedings while
9 a psychologist took a look at the situation.

10 THE DEFENDANT: I know that, Your Honor. But then
11 again my procedure starts where it stopped at. It don't start
12 over. And they started my proceedings over.

13 THE COURT: Well, it does start over. That's the law.

14 THE DEFENDANT: I have -- I have cases that say that
15 it does not start over.

16 THE COURT: Mr. Williams, if there's something that
17 you want to file this morning, I'll let you file it. But I
18 can't give you legal advice. You wanted to represent yourself.

19 THE DEFENDANT: Okay. I would like to.

20 THE COURT: Okay. So you've got a copy for the
21 district attorney. And we've -- the district attorney, do you
22 acknowledge that you have a copy?

23 MS. SHAFFER: Yes.

24 THE COURT: Procedurally, Mr. Williams, I have to set
25 a motion for a hearing, and you've got a trial date that's
26 coming up rapidly.

27 THE DEFENDANT: Okay.

28 THE COURT: I'd like to put this matter on calendar

1 for a hearing on the 19th. That's not even quite a week. Do
2 you think you could get something in response on file even if
3 it's the night before.

4 MS. SHAFFER: Your Honor, I believe that we can
5 probably get something together.

6 THE COURT: Okay. I'll place hearing on the motion on
7 June 19th at 2:30 in the afternoon. People to provide their
8 response by June 18th at 5:00 p.m. And certainly you're going
9 to have to serve Mr. Williams with that as well as the Court.
10 And if you would make sure that I get a courtesy copy or I won't
11 see it.

12 We'll have a hearing on your motion.

13 THE DEFENDANT: Okay. Your Honor, I have another
14 matter here. Your Honor, I did not have -- the public defender
15 office never gave me nothing pertaining to my case. I don't
16 have nothing. They gave me nothing for my case. And I asked
17 the district attorney for discovery. They gave me nothing. I
18 don't have nothing to proceed with, period.

19 THE COURT: Okay. This had been Ms. Silver's case.
20 Do you have any information, Mr. Fabian, as to whether or not
21 any information has been turned over to Mr. Williams?

22 MR. FABIAN: I don't know. But if not, Your Honor,
23 I'll talk to Ms. Silver to make sure. He should be getting a
24 copy of all of his police reports, all of the preliminary
25 hearing transcripts and that sort of thing. Copy of -- we're in
26 the information stage. He should have a copy of that also.
27 It's not been turned over to you yet?

28 THE DEFENDANT: No, I haven't received nothing.

1 MR. FABIAN: I'll talk to Ms. Silver today, and we'll
2 make sure that we drop it off at the jail today.

3 And there's one thing that I ask the Court. Normally
4 we provide police reports to our clients -- I mean, not
5 normally. Always we delete out all addresses and phone numbers
6 of nonpolice witnesses and victims.

7 Doing that, though, to someone that is representing
8 themselves presents a problem for a person trying to investigate
9 their own -- trying to investigate his own crime. I'm just
10 going to ask the Court direction as to whether or not we should
11 delete out all addresses and phone numbers or should we give him
12 the police reports?

13 THE COURT: What's the People's position on that? I
14 want to know if it's a problem.

15 MS. SHAFFER: Your Honor, based on the nature of the
16 charges being possession of stolen property, it will be our
17 position not to disclose those addresses and those phone numbers
18 directly to the defendant but instead appoint him an
19 investigator who can be the middle person. But those victims
20 probably wouldn't be real responsive anyway directly to the
21 defendant.

22 THE COURT: That would be the appropriate procedure if
23 you have an investigator that would be helping you, that person
24 could have the addresses and telephone numbers and would do the
25 investigation for you.

26 MR. FABIAN: So what I'm understanding is you want us
27 to then make copies of the police reports and so redact out
28 addresses and phone numbers of all nonpolice witnesses? Police

EXHIBIT

EXHIBIT

STATE OF CALIFORNIA

DEPARTMENT OF CALIFORNIA HIGHWAY PATROL

VEHICLE REPORT

CHP 180 (Rev. 2-99) OPI 061 *PCN 570030892459 DR 2/16/03 MS*NOTE: CHP 180 IS FURNISHED TO ALL PEACE
OFFICERS BY THE CALIFORNIA HIGHWAY PATROL

REPORTING DEPARTMENT <i>Petaluma PD</i>	LOCATION CODE <i>4903</i>	DATE / TIME OF REPORT <i>2/7/03 0900</i>	NOTICE OF STORED VEHICLE DELIVERED PERSONALLY <input type="checkbox"/>	FILE NO. <i>03-874</i>				
LOCATION TOWED / STOLEN FROM <i>KENILWORTH E. WASHINGTON</i>	ODOMETER READING <i>20949</i>	VIN CLEAR IN SVS? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	DATE / TIME DISPATCH NOTIFIED <i>2/7/03</i>	LOG NO.				
YEAR <i>80</i>	MAKE <i>DODGE</i>	MODEL <i>280</i>	BODY TYPE <i>VAN</i>	COLOR <i>TAN</i>	LICENSE NO. <i>1AM-828</i>	<input type="checkbox"/> ONE <input checked="" type="checkbox"/> TWO	MONTH / YEAR <i>9/03</i>	STATE <i>CA</i>
VEHICLE IDENTIFICATION NO. <i>B21J9AX121383</i>				ENGINE NO.	VALUATION BY <input checked="" type="checkbox"/> OFFICER <input type="checkbox"/> OWNER			
						<input type="checkbox"/> 0-300 <input checked="" type="checkbox"/> 301-4000 <input type="checkbox"/> 4001+ <input type="checkbox"/> \$		

REGISTERED OWNER

LEGAL OWNER

*TERENCE LEITH HARRIS
9606 EMPIRE RD
OAKLAND, CA 94607*

 SAME AS R/O

STORED IMPOUNDED RELEASED RECOVERED - VEHICLE / COMPONENT

TOWING / STORAGE CONCERN (NAME, ADDRESS, PHONE)		665-9104		STORAGE AUTHORITY / REASON	
<i>DOWNTOWN AUTO BODY 1490 N. PETALUMA BLVD</i>				<i>21655-5 VC</i>	
TOWED TO / STORED AT <i>SPM C</i>		AIRBAG? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	1 <input type="checkbox"/> 2 <input checked="" type="checkbox"/> YES	DRIVEABLE? <input type="checkbox"/> NO <input type="checkbox"/> JUNK <input type="checkbox"/> UNK	VIN SWITCHED? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
CONDITION	YES	NO	ITEMS	YES	NO
WRECKED			SEAT (FRONT)		REGISTRATION
BURNED HULK per 431(c) VC			SEAT (REAR)		ALT. / GENERATOR
VANDALIZED			RADIO		BATTERY
ENG. / TRANS. STRIP			TAPE DECK		DIFFERENTIAL
MISC. PARTS STRIP			TAPES		TRANSMISSION
BODY METAL STRIP			OTHER RADIO		AUTOMATIC
SURGICAL STRIP per 431(b) VC			IGNITION KEY		MANUAL
RELEASE VEHICLE TO:			GARAGE PRINCIPAL / AGENT STORING VEHICLE (SIGNATURE)		

DATE / TIME
2/7/03

NAME OF PERSON / AGENCY AUTHORIZING RELEASE	I.D. NO.	DATE	CERTIFICATION: I, THE UNDERSIGNED, DO HEREBY CERTIFY THAT I AM LEGALLY AUTHORIZED AND ENTITLED TO TAKE POSSESSION OF THE ABOVE DESCRIBED VEHICLE.	
SIGNATURE OF PERSON AUTHORIZING RELEASE			SIGNATURE OF PERSON TAKING POSSESSION	

STOLEN VEHICLE / COMPONENT EMBEZZLED VEHICLE PLATE(S) REPORT

DATE / TIME OF OCCURRENCE	DATE / TIME REPORTED	NAME OF REPORTING PARTY (R/P)		DRIVER LICENSE NO. / STATE
LAST DRIVER OF VEHICLE	DATE / TIME	ADDRESS OF R/P		TELEPHONE OF R/P ()

I CERTIFY OR DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING IS TRUE AND CORRECT.

REMARKS

[LIST PROPERTY, TOOLS, VEHICLE DAMAGE, ARRESTS]

DRIVER'S NAME <i>ZHONT, G.</i>	ARRESTED / SECTION? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO <i>459</i>	REPORTED BY <i>GILMAN</i>	CARGO / TYPE? <input type="checkbox"/> YES <input type="checkbox"/> NO	VALUE \$ <input type="checkbox"/> BILL OF LADING ATTACHED
-----------------------------------	---	------------------------------	---	--

*360° POSE PAINT**POOR INTERIOR**MISC CLOTHING & TOOLS**PASSENGER DOOR BROKEN**360° RUST**BRKEN REAR TAILLIGHT*

FRONT



LEFT SIDE



RIGHT SIDE



REAR



TOP

SIGNATURE OF OFFICER TAKING REPORT <i>John</i>	I.D. NO. <i>2042</i>	SUPERVISOR <i>K. Evans</i>	REQUIRED NOTICES SENT TO REGISTERED AND LEGAL OWNERS PER 22852 VC?	<input type="checkbox"/> YES <input type="checkbox"/> NO	DATE NOTIFIED <i>2/7/03 DR</i>
---	-------------------------	-------------------------------	---	---	-----------------------------------

13341 2/7/03

6180_299.fsp